IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. .....

GENERAL DRIVERS AND DAIRY EMPLOYEES, LOCAL UNION NO. 563; LOCAL NO. 139, INTERNATIONAL UNION OF OPERATING ENGINEERS,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit

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AUTHORITIES CITED

Cases Cited

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Communications Workers of America v. NLRB, 362 US 479 (1960) 6, 7, 8, 9

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NLRB v. Local 825, International Union of Operating Engineers, 400 US 297 (1971) 11

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Pipefitters, Local 519 v. NLRB, 416 F.2d 1120 (D. C. Cir., 1969) 8

Pipefitters v. NLRB, 278 F.2d 858 (D.C. Cir., 1960) .. 8

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United Mine Workers v. NLRB, 299 F.2d 441 (D.C. Cir., 1962) 8

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To the United States Court of Appeals for the Seventh Circuit

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case.

OPINIONS BELOW

The opinions and judgment of the Court below are unreported and are printed in Appendix "A", *infra*, pp. A-1–A-7; and Appendix "B", *infra*, pp. A-8–A-9. The

decisions and orders of the National Labor Relations Board (176 NLRB No. 51; 179 NLRB No. 131; 179 NLRB No. 109) are unreported and are printed in Appendix "C", *infra*, pp. A-10–A-15; Appendix "E", *infra*, pp. A-71–A-73; and Appendix "G", *infra*, pp. A-90–A-92.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on May 18, 1971. The jurisdiction of this Court rests upon 28 U.S.C. § 1254 (1).

QUESTION PRESENTED

1. Whether by entering a decree enforcing portions of the order prohibiting petitioners from engaging in secondary activity designed to force any neutral employers to cease doing business "with any other employer or person" the Court of Appeals exceed the authority granted by Section 10 (e) of the National Labor Relations Act.

STATUTES INVOLVED

The statutory provisions involved are Sections 8 (b) (4) (i) (ii) (B), 10 (c) and 10 (e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. § 151 et seq.) They are printed in Appendix "I", *infra*, pp. 108-110.

STATEMENT

Petitioner Teamsters, with jurisdiction in the Appleton, Neenah and Menasha area of Wisconsin's Fox River Valley, has over 2000 members and contracts with over 90 employers, including the seven belonging to the Fox Valley Construction Materials Suppliers Association that is charging party in these cases. Petitioner Engineers, a local union having jurisdiction throughout the entire State of Wisconsin, has over 5,000 members employed by hundreds of contractors and is organized into nine dis-

trict and subdistrict offices, only one district of which (Appleton) is involved in these cases. Association members employed over 150 members of petitioner Teamsters and over 50 members of petitioner Engineers. In 1968 after separate contracts between the Association and each Union expired, members of each Union struck firms belonging to the Association in order to secure renewal of these collective bargaining agreements.

Some members of the Association were engaged solely as suppliers of ready-mixed concrete and sand, gravel or aggregate to various contractors in the construction industry. Others, including Courtney & Plummer, also acted as contractors themselves for certain projects. Most of the work done by Union members working for Association members is performed away from their own premises or yards. Shortly after the strikes commenced, the employers hired replacements and reinstituted their operations. Members of petitioner Teamsters were on strike for ten and one-half months before gaining a contract; it took members of petitioner Engineers almost two years to reach agreement.

Before the strike was settled, petitioner Teamsters picketed Association members at between 40 and 50 projects where they had attempted to continue in business through the use of replacements and strikebreakers. Although the Association filed many secondary boycott charges during the strikes, the Board is here with only eight projects where it found one or both Unions to have transgressed those lines "more nice than obvious" which distinguish legitimate primary from forbidden secondary activity.[1] Not one of the incidents before the Court of Appeals involved any primary employer who did not belong to the Association; not one of these incidents arose out

[1] **Local 761, Electrical Workers v. NLRB (General Electric Co.)**, 366 US 667 (1961).

of any dispute other than petitioners' strikes against the Association; and, before the incidents in question, neither petitioner had ever been subject to a secondary boycott order entered by a United States Court of Appeals.[2]

In the face of these considerations, the Board nevertheless entered, and the judgment below enforces, an order enjoining any further § 8(b)(4)(B) violations, regardless of their nature, that concern not only all other **secondary** employers (besides those involved in the incidents here) that may do business with Association members, but further any other § 8(b)(4) violations with respect to any other **primary** employer with whom **either** petitioner may have a dispute. In other words, under the decree entered below, the Board could, in civil or criminal contempt proceedings, seek to adjudicate and fine or imprison either petitioner, or any of its agents, who are hereafter charged, in any respect, with secondary boycott violations. The Court of Appeals sustained the order, noting—without further explanation—that it could be "anticipated" that each petitioner "would again resort to unlawful secondary conduct in future disputes with **other** primary employers" (App. A, p. A 17; emphasis added).

REASONS FOR GRANTING THE WRIT

The decision below, although citing **NLRB v. Express Publishing Co.**, 312 US 426 (1941), in fact conflicts with applicable decisions by this Court and with decisions on

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[2] In November, 1970, the Seventh Circuit enforced a limited secondary boycott order entered by the Board against petitioner Teamsters arising from a pre-strike incident in which members of Local 563 employed by Courtney & Plummer became derivatively involved in a § 8(b)(4) violation by respecting another union's picket line at their place of employment. **NLRB v. General Teamsters, etc., Local No. 126**, 435 F.2d 288 (7th Cir., 1970).

the same point by other United States Courts of Appeals.[3] The patently arbitrary, overreaching and punitive Board orders enforced below thwart the carefully fashioned congressional scheme for adjudication and remedy of unfair labor practice complaints, and § 8(b)(4) allegations in particular, and violate basic principles of equity applicable to court and administrative orders alike.

In **NLRB v. Express Publishing Co.**, *supra*, this Court struck down unduly broad provisions of a Board order and held that the Board's power under § 10(c) of the Act "to enter an order requiring such person to cease and desist from **such** unfair labor practice":

> "is not an authority to restrain generally all other unlawful practices which it has neither found to have been pursued nor persuasively to be related to the proven unlawful conduct."
>
> 312 US at 433.
>
> "Congress did not contemplate that the courts should by contempt proceedings, try alleged violations of the . . . Act not in controversy and not found by the Board and which are not similar or fairly related to the unfair labor practice which the Board has found."
>
> 312 US at 435.
>
> "To justify an order restraining other violations it must appear that they bear some resemblance to that which the employer has committed **or** that danger of their commission in the future **is to be anticipated from the course of his conduct in the past.**"
>
> 312 US at 437 (Emphasis added).

Here, the only violations relied upon by either the Board or the Court below to support the orders in question con-

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[3] Thus meeting two of the considerations governing review on certiorari set forth in Rule 19 of this Court.

cern certain allegedly neutral employers implicated by Union conduct arising or proliferating from the same lengthy strikes against one employer, the Association.[4] Therefore the most that could "persuasively" or "fairly" be anticipated from this course of past conduct could amply be met by an order limited to the named secondaries and any other neutral employer who does business with the Association.

In **Communications Workers of America v. NLRB**, 362 US 479 (1960), this Court applied **Express Publishing** principles to a decree enjoining the union from committing further unfair labor practices against the named company "or any other employer" and, citing **Express Publishing**, struck the quoted phrase from the order. During a strike against an Ohio telephone company, the unions were found to have coerced employees of the struck firm and workers loaned to it by affiliated companies in their right to refrain from participating in concerted activities. This Court, piercing through form to substance, refused to expand the scope of the order beyond the ambit of the underlying dispute:

> "Petitioners were not found to have engaged in violations against the employees of any employer other than Ohio Consolidated and we find neither justification nor necessity for extending the coverage of the

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[4] In **General Drivers, etc., Local 563, et al. (Oshkosh Ready Mix Co.)**, 186 NLRB No. 38, 76 LRRM 1787, the Board found that certain pressures by petitioners against C & P and another area concrete firm under common ownership that arose out of the Union's strikes against the Association violated § 8(b)(4). Again, however, these incidents arose or proliferated from the very same disputes with the Association that are involved here. On the other hand, in **International Union of Operating Engineers, Local No. 139 (Fox Valley Constr. Materials Suppliers, Assn.)**, 182 NLRB No. 12, 74 LRRM 1058, two entire complaints of secondary boycott activity arising from incidents later in the strike were dismissed by the Board.

order generally by the inclusion therein of the phrase 'any other employer'."

362 US at 480.

"That loaned employees of other affiliated companies were included within the ambit of petitioner's coercive acts plainly does not evidence such a generalized scheme against all telephone employees, for it was only the employment of such employees at the struck plant that brought them within the scope of the union's activities:"

362 US at 897-898.

Curiously, the opinion below reads as if this Court had never decided **Communications Workers,** in spite of its obvious teaching that an order cannot be broadened to encompass "any other employer" unless violations have been proven against other unrelated employers or the **evidence** demonstrates a generalized scheme of unlawful conduct against other employers. But the orders challenged here meet neither test, since the court below did not find petitioners to have engaged in unlawful secondary pressures involving primary employers other than Association members nor is there evidence of any threat by petitioners to violate § 8(b)(4) in the future. Thus the decision below conflicts directly with **Express Publishing** principles and clashes head on with **Communications Workers.**

It also conflicts with the uniform holdings of other Courts of Appeal, all requiring that "broad" § 8(b)(4) orders which proscribe unlawful secondary pressures in any subsequent primary dispute rest firmly on either an adjudicated practice of indiscriminate and incorrigible secondary boycotting or evidence showing a clear threat to engage in illegal conduct in future disputes. Indeed, except for the decision below, we have found no circuit decision approving such a "broad" order grounded solely on violations during the course of a single strike.

The District of Columbia Circuit has repeatedly rebuffed Board efforts to convert its appellate processes "into a labor court of the first instance by virtue of its contempt powers."[5] For example, in **Teamsters Local 554 v. NLRB**, 262 F.2d 456 (D.C. Cir., 1958), a decision presaging the strictures of **Communications Workers**, the Court of Appeals excised broad "and other [primary] employer" language in a Board order since "no threat was made to use illegal methods against 'all other employers' ", 262 F.2d at 462. Following **Communications Workers**, the D.C. Circuit has consistently narrowed Board orders in cases involving union coercion,[6] union-caused discrimination,[7] unlawful hiring hall requirements,[8] and even violations of § 8(b)(4) where the Board's order merely mentions "any other [secondary] employer" who may do business with a specified primary.[9]

Contrary to the ruling below, the Second Circuit will enforce "blanket" § 8(b)(4) orders proscribing any subsequent secondary boycott violations without limitation only if it finds a substantial number of unrelated previously adjudicated secondary boycott violations or an avowed policy to apply unlawful secondary pressures against other

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[5] **Teamsters Local No. 554 v. NLRB**, *infra*, 262 F. 2d at 462-463.

[6] **United Mine Workers v. NLRB**, 299 F.2d 441 (D.C. Cir., 1962); **Puerto Rico Drydock Terminal v. NLRB**, 284 F.2d 212 (D.C. Cir., 1960); **Brotherhood of Carpenters v. NLRB**, 286 F.2d 533 (D.C. Cir., 1960).

[7] **Local 150, Operating Engineers v. NLRB**, 273 F.2d 833 (D.C. Cir., 1959).

[8] **New York Mailers, Local 6 v. NLRB**, 316 F.2d 371 (D.C. Cir., 1963); **Pipefitters v. NLRB**, 278 F.2d 858 (D.C. Cir., 1960); **Pipefitters, Local 519 v. NLRB**, 416 F.2d 1120 (D.C. Cir., 1969); **Highway Truck Drivers v. NLRB**, 273 F.2d 815 (D.C. Cir., 1959); **Steelworkers Local 4203 v. NLRB**, 294 F.2d 256 (D.C. Cir., 1961).

[9] **Teamsters Local 282 v. NLRB**, 344 F.2d 649 (2nd Cir., 1965); **see also** 428 F.2d 994 (2nd Cir., 1970).

primary employers.[10] It reverses such orders, however, if evidence of unlawful efforts to engage in secondary activities affecting other unrelated employers is lacking.[11]

Other Circuit Courts of Appeal also require proof of other unrelated violations or of a clear intention to violate the act in the future before enforcing broad orders affecting any other primary employer. In **NLRB v. International Hod Carriers, Local 1140**, 285 F.2d 397 (8th Cir., 1960), the Board, as here, ordered the union to cease exerting secondary pressure on any neutral employer in relation to a dispute with the named primary employer "or any other employer." The Eighth Circuit upheld that portion of the order affecting all neutral employers but, citing **Communications Workers** excised the blanket injunction against unrelated secondary activities involving another primary employer:

> "[U]pon the record before us, we observe that the threats of future unlawful activities were directed and confined solely to Union's grievance with [the primary employer]; therefore that portion of the order . . . 'or any other employer' . . . being without factual support should be stricken" (285 F.2d at 404).

Likewise the First Circuit has overturned a § 8(b)(4) order relating to all primary employers, as well as all neutral employers, where the sole evidence of an intention to commit future violations was a union official's remark that they "had to start somewhere" to fight non-union subcontractors. The First Circuit stated:

> "While . . . we [have] imposed an order of this character, in that instance there had been two viola-

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[10] **NLRB v. Musician's Local 802**, 422 F.2d 850 (2nd Cir., 1970); **NLRB v. Milk Drivers Local 584**, 341 F.2d 29 (2nd Cir., 1965).

[11] **NLRB v. Local 638, Enterprise Ass'n.**, 285 F.2d 642 (2nd Cir., 1960).

> tions, in implementation of an announced policy . . . sanctioned at a union meeting, whereas here we have only a perhaps rather offhand remark by one union official. We do not think the present case is sufficiently serious'' (278 F.2d at 291).

Similar broad orders have been reversed by the Ninth Circuit [**NLRB v. Local 1065, Carpenters**, 330 F.2d 779 (9th C.A., 1964)] and by the Fifth Circuit, [**NLRB v. Operating Engineers Local 926**, 267 F.2d 418 (5th C.A. 1959)], where neither prior violations nor intent to commit future violations had been proven.

The decision below, then, stands alone in enforcing blanket § 8(b)(4)(B) orders against unions based solely upon violations arising out of single, albeit lengthy disputes against the equivalent of one employer,[12] and therefore, if only in the interest of maintaining a uniform national labor policy, these orders should be reviewed by this Court. But these orders warrant review and reversal for other reasons as well. This Court has recognized that ''picketing has traditionally been a major weapon to implement the goals of a strike'' and that ''implicit in the Act [is] that the public interest is served by freedom of labor to use the weapon of picketing.''[13] That freedom as well as the right to strike that it serves is unnecessarily and severely inhibited when unions and their members who work in common situs industries must ''for the indefinite future'' go on strike ''at the peril of a summons

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[12] Even were a "blanket" order against petitioner Teamsters to be warranted because of violations later in the dispute, petitioner Engineers stands cleared of all subsequent charges and no proceedings against it involving unrelated disputes are presently pending before the Board or the Courts of Appeals. In short, the order against petitioner Engineers is based on far weaker grounds even than that against petitioner Teamsters.

[13] **Brotherhood of R. Trainmen v. Jacksonville Terminal Co.**, 394 US 369, 385 (1969).

for contempt'"[14] on the allegation that workers in some respect have transgressed those "arbitrary, tenuous and shifting [lines] separating 'primary' from 'secondary' activities."[15] *In terrorem* sanctions of this sort, bad enough to an employer for whom labor relations is a function incidental to his business operations, have an impact far worse applied to a union whose principal activities are to represent thousands of working men in scores of bargaining units, all within the limitations of industrial democracy, rather than the more authoritarian infrastructure of corporate management.

Were it established that statutory purposes require blanket § 8(b)(4)(B) orders whenever several violations of this statute are proven in a single dispute, then the orders in question might appear less Draconian. But this is scarcely arguable in light of the arsenal of special protections and remedies which the Act affords employers aggrieved by unlawful secondary pressures: priority case handling in the Regional Offices [§ 10(1)]; a mandate that the Board seek preliminary injunctive relief from the federal district court [§ 10(1)]; and the statutory cause of action for damages arising from such conduct [§ 303]. Indeed, the risk of inconsistent district and appellate court adjudications of the legality of the same conduct, or, if not that, the potential for adminstrative circumvention of § 10(1) procedures by recourse to contempt process are additional reasons for Court review of this important question.

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[14] **NLRB v. Express Publishing,** *supra*, 312 US at 436.

[15] **Brotherhood of R. Trainmen v. Jacksonville Terminal Co.,** *supra*, 394 US at 386-387. The rules governing common situs picketing are not only subject to the "fuzziness" and "vagueness" of the basic primary-secondary dichotomy but "among the most mooted and complex under the Act." 394 US at 388-389. "The tapestry that has been woven in classifying such conduct is among labor laws most intricate." **NLRB v. Local 825, International Union of Operating Engineers,** 400 US 297 (1971).

CONCLUSION

For the reasons stated, this petition should be granted.

Respectfully submitted

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APPENDIX "A"

In the United States Court of Appeals
For the Seventh Circuit

(Caption omitted)

APRIL 2, 1971

Before SWYGERT, *Chief Judge*, CUMMINGS and KERNER, *Circuit Judges*.

PER CURIAM. The National Labor Relations Board has petitioned for enforcement of three orders issued against certain Teamsters', Engineers', and Carpenters' Unions.[1] The orders are reported at 176 NLRB No. 51, 179 NLRB No. 109, and 179 NLRB No. 131. The issue before us is whether the Unions violated Section 8 (b) (4) (B) of the National Labor Relations Act by threats and picketing at four jobsites.[2]

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[1] The unions involved are General Drivers and Dairy Employees, Local 563; Local 139, International Union of Operating Engineers, AFL-CIO; and Union 3203, United Brotherhood of Carpenters & Joiners of America, AFL-CIO.

[2] Section 8(b)(4)(B) provides in pertinent part:

"It shall be an unfair labor practice for a labor organization or its agents—

* * * * * * * *

"(4) (i) to engage in, or to induce or encourage any individual employees by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * * * * * *

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease

The activities in question occurred in Fox Valley, Wisconsin. In that area, for many years the Fox Valley Construction Material Suppliers Association has conducted industry-wide collective bargaining on behalf of its seven employer members. After contracts between the Teamsters, Engineers, and Association members had expired, and negotiations for a new contract had collapsed, the Teamsters struck all the members of the Association on July 29, 1968. On the next day, the Engineers struck the four Association members with which it had contractual relations. Daily picketing occurred thereafter at the premises of the struck employers. Some of the picketing was joint picketing by both Unions. Despite the strike and picketing, the members of the Association continued to do business.

The Board contends that the Unions engaged in prohibited secondary boycotts at various locations. Because of the limited nature of the exceptions filed by the Unions, we need only consider whether threats and picketing at four locations where Association members were engaged in work with other employers violated Section 8(b) (4) (B). Our conclusion is that the statute was violated at each common situs and that a judgment should therefore issue enforcing the Board's orders in full.

Threats at Manhattan Project

The P. G. Miron Construction Company ("Miron") was engaged as the general contractor to construct an

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doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in the clause (b) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." 29 U.S.C. § 158(b)(4)(B).

addition to the plant of the Manhattan Rubber Company in Neenah, Wisconsin. Miron rented two cranes with operators from Schindler Equipment Rentals, Inc. On August 10, 1968, ready-mix trucks of Courtney & Plummer, Inc. ("C & P"), a struck member of the Association, were delivering concrete to the Manhattan site, and the Schindler cranes were being used to move the concrete. The cranes were being operated by Carl Schindler, president of the Schindler company, and his employee, Eugene LeFeber. Overall supervision was being provided by Dave Voss, superintendent for Miron.

At 10:00 a.m., Teamster pickets arrived on the scene and then Engineers' Business Agent Shaw appeared. Shaw told LeFeber that he was going to try to take LeFeber's Engineers' membership card, fine him, and expel him from the Engineers. Shaw told Schindler to quit and to let LeFeber quit because they were handling material of strike-bound sub-contractor C & P. Schindler then told LeFeber to leave and asked Voss whether he could quit. Voss demurred "because the concrete pour then in progress was for a large, solid concrete slab which had to be completed before operations could cease." Schindler relayed this reason to Shaw, who told Schindler that he would have to appear before the union "court" and be fined. Shaw also told Voss that all Miron's jobs would be picketed on the following Monday. The trial examiner credited Schindler's testimony that the coercion and threatened picketing were directed against his company and Miron because of C & P's use of non-union men. The trial examiner refused to credit Shaw's testimony that he merely told Schindler and LeFeber that there were [Teamster] pickets at the entrance to the premises and that under Schindler Equipment's contract with Miron, Schindler and LeFeber were not required to stay on the job.

The Board concluded that Shaw's actions violated Section 8(b)(4)(B). We agree that these direct threats to

Schindler, LeFeber, and Voss constituted such a violation. In our view, Schindler Equipment was an independent employer working for Miron rather than for C & P. Schindler Equipment's sole contractual relationship was with Miron. C & P neither engaged Schindler Equipment nor exerted control over its employees. The trial examiner was entitled to credit Schindler's testimony that Shaw's threats were directed against his company and Miron rather than against C & P.

The Unions urge that since the Schindler crane operators were contributing to C & P's operations, Schindler Equipment could properly be subjected to the pressures exerted. This ignores the rationale of *National Labor Relations Board v. Denver Building & Construction Trades Council,* 341 U.S. 675, that the relation between contractors on a construction contract is not so interconnected that they should all be regarded as one entity.[3] Therefore, it was an unfair labor practice for Shaw to force Miron and Schindler Equipment to terminate relations with C & P. As neutrals, Miron and Schindler Equipment were entitled under Section 8(b)(4) to relief from respondents' secondary activities.[4]

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[3] The Teamsters' argument supporting their activities at the Manhattan project rests on their claim that the *Denver Building Trades* case was overruled. However, subsequent to the filing of the briefs herein, it was applied and reaffirmed in *National Labor Relations Board v. Local 825, International Union of Operating Engineers,* ... U.S. .... The continuing vitality of *Denver Building Trades* was also acknowledged in *Markwell & Hartz, Inc. v. National Labor Relations Board,* 387 F.2d 79, 83-84 (5th Cir. 1967), certiorari denied, 391 U.S. 914; *National Labor Relations Board v. Nashville Building & Construction Trades Council,* 425 F.2d 385, 390 (6th Cir. 1970); *Orange Belt District Council of Painters No. 48, AFL-CIO v. National Labor Relations Board,* 361 F.2d 70 (D.C. Cir. 1966).

[4] In their brief and at oral argument, the respondents did not seek to justify the threats made by Carpenters to Edward Kraemer & Son, Inc., employees at the Highway 41 project. Therefore, this opinion will not discuss that phase of the Board's orders.

Picketing of Reserved Neutral Gates

The remainder of this case involves the picketing of reserved neutral gates at three other common situs construction locales. At each, respondents picketed gates used only by employees of neutrals instead of confining their picketing to gates reserved solely for C & P and its suppliers. As the Board found, respondents' motive was to exert unlawful pressure on the neutral employers.

To determine if the picketing was secondary and therefore forbidden, it is appropriate to consider the Board's *Moore Drydock* criteria evolved in *Sailors' Union of the Pacific*, 92 NLRB 547, 549 (1950).[5] One of them shows that this picketing was secondary, for it was not "limited to places reasonably close to the location of the *situs*."

As to the Highway 41 project, C & P was the prime contractor and two of the subcontractors were Edward Kraemer & Son, Inc. and John F. Bloomer Co., Inc. Respondents contend that Kraemer and Bloomer were primary employers rather than neutral secondaries. However, as the Board found, C & P's project coordinator, Alan Rich, did not exert direct control over the Kraemer or Bloomer employees. They were not on the C & P payroll, and indeed there was no employer-employee relationship between them and C & P. The Board also found Kraemer and Bloomer were not owned or controlled by C & P, the prime contractor, and that C & P would not have performed Kraemer's or Bloomer's work even if there had been no strike. Since these findings are supported by sub-

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[5] *Moore Drydock* established the following four conditions to determine if picketing is primary: "(a) The picketing is strictly limited to times when the *situs* of the dispute is located on the secondary employer's premises; (b) at the time of the picketing, the primary employer is engaged in its normal business at the *situs*; (c) the picketing is limited to places reasonably close to the location of the *situs*; and (d) the picketing discloses clearly that the dispute is with the primary employer." These conditions were approved in *Local 761, Electrical Workers v. National Labor Relations Board*, 366 U.S. 667, 676-679.

stantial evidence, the picketing violated Section 8(b)(4)(B) if the reserved neutral gates were not honored.

The respondents contend that they were not required to honor the reserved gates at the Highway 41 project because "there was no way to guarantee that entrance to the project was really limited" to the two C & P gates and the three gates reserved for the other employers. However, the respondents did not picket the perimeter of the project but picketed all five gates, thereby ignoring *Moore Drydock* and Section 8(b)(4)(B).

At the Leach Company's plant in Oshkosh, Wisconsin, C & P was constructing a truck parking lot. After November 25, 1968, C & P reserved Gate 2 for use of its employees and suppliers, and Gate 1 was reserved for "employees, job applicants, and suppliers of Leach Company." Nevertheless, the Union picketed Leach's gate instead of the C & P gate. Accordingly, the Board found that the picketing at the neutral gate instead of at the primary gate was contrary to the above-quoted *Moore Drydock* requirement and in contravention of Section 8(b)(4)(B). The Board also observed that there was no relation between C & P's parking lot construction and the operation of the Leach plant. Since the Board sanctioned the pre-November 25 picketing, we need not consider the Unions' argument that before then the two reserved gates were ineffective.

In April 1969, C & P was extending a driveway, building a culvert, and supplying fill at the plant of the Great Northern Container Corporation in Appleton, Wisconsin. C & P had posted a reserved gate sign, designating the west side of the driveway to the rear of the Great Northern plant as Gate 1 for the use of Great Northern. The east side was designated as Gate 2 for C & P. The driveway was divided into two sections, with rope and iron stakes separating the west side (leading to the rear loading dock) from the east side (leading to C & P's

construction area). The Board found that the reserved entrances adequately provided separate gates for primary and secondary employers. Both gates were picketed, and for one period the picketing was extended even further—to the west of neutral Gate I. Since the reserved gates were effective in channeling primary activities during this period, the respondents' contention that the gates at Great Northern were flimsy is unavailing. *Local 761, Electrical Workers v. National Labor Relations Board,* 366 U.S. 667, 681.

Propriety of Orders

The Board's orders require respondents to cease and desist from their unlawful conduct when directed at other employers and employees with the same unlawful object, regardless of whether respondents' primary dispute is with the Fox Valley Construction Material Suppliers Association. As *International Brotherhood of Electrical Workers v. National Labor Relations Board,* 341 U.S. 705, 706, made plain, such orders are proper insofar as they deter respondents from involving neutral employers in their dispute with the Association, for otherwise "other employers who do business with him [the primary employer, would be left] exposed to the same type of pressure through other comparable channels."

The portions of the orders prohibiting respondents from engaging in secondary activity designed to force neutral employers to cease doing business "with any other employer or person" were justified because it could be anticipated that respondents would again resort to unlawful secondary conduct in future disputes with other primary employers. *National Labor Relations Board v. Express Publishing Co.,* 312 U.S. 426, 437; *National Labor Relations Board v. Local 135, Teamsters,* 267 F.2d 870, 874 (7th Cir. 1959), certiorari denied, 361 U.S. 914.

The orders will be enforced.

APPENDIX "B"

JUDGMENT

Before: Swygert, Chief Judge, Cummings and Kerner, Circuit Judges.

THIS CAUSE came on to be heard upon the applications of the National Labor Relations Board for the enforcement of certain orders issued by it against Respondents General Drivers and Dairy Employees, Local No. 563, its officers, agents, successors, and assigns, Robert Schlieve, its secretary-treasurer, Local 139, International Union of Operating Engineers, AFL-CIO, its officers, agents, successors, and assigns, Donald Shaw, its business representative, Local Union No. 3203, United Brotherhood of Carpenters & Joiners of America, AFL-CIO and Jerry Jahnke, its business representative on June 4, 1969; Respondent General Drivers and Dairy Employees, Local Union 563, its officers, agents, and representatives on October 20, 1969; and Respondents General Drivers and Dairy Employees, Local Union 563 and its agent, Jeffrey Curtin; International Union of Operating Engineers, Local 139 and its agent Donald Shaw, their officers, agents, and representatives on December 2, 1969. The Court heard argument of respective counsel on February 17, 1971, and has considered the briefs and transcripts of record filed in the above cases. On April 2, 1971, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's Orders.

ON CONSIDERATION WHEREOF, it is hereby ordered and adjudged by the United States Court of Appeals for the Seventh Circuit that the said orders of the National Labor Relations Board in said proceedings be enforced, and that Respondents General Drivers and Dairy Employees, Local 563, its officers, agents, successors, and as-

signs, Robert Schlieve, its secretary-treasurer, Local 139, Internatioanl Union of Operating Engineers, AFL-CIO, its officers, agents, successors, and assigns, Donald Shaw, its business representative, Local Union No. 3203, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and Jerry Jahnke, its business representative; Respondent General Drivers and Dairy Employees, Local Union 563, its officers, agents, and representatives; and Respondents General Drivers and Dairy Employees, Local Union 563 and its agent, Jeffrey Curtin; International Union of Operating Engineers, Local 139 and its agent, Donald Shaw, their officers, agents, and representatives abide by and perform the directions of the Board in said Orders contained.

IT IS FURTHER ORDERED that costs shall be taxed against the Respondents.

/s/ LUTHER M. SWYGERT
Judge, United States Court of Appeals
for the Seventh Circuit

/s/ WALTER J. CUMMINGS
Judge, United States Court of Appeals
for the Seventh Circuit

/s/ OTTO KERNER
Judge, United States Court of Appeals
for the Seventh Circuit

A True Copy:
Teste:

KENNETH J. CARRICK
Clerk of the United States Court of
Appeals for the Seventh Circuit
By H. K. McCORMACK
Deputy Clerk

(Seal)

Filed: May 18, 1971

APPENDIX "C"

176 NLRB No. 51

United States of America
Before the National Labor Relations Board

DECISION AND ORDER

On February 4, 1969, Trial Examiner Robert E. Mullin issued his decision in the above-entitled proceeding, finding that Respondent Unions had engaged in and were engaging in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. The Respondents filed exceptions to the Trial Examiner's Decision and a supporting brief, and the Charging Party filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case, and adopts the findings, conclusions, and recommendations of the Trial Examiner, with the additions and modifications set forth below.

We cannot agree with the Trial Examiner's finding that by Business Agent Shaw's inducement of Moesch to quit work and by his threats to Rouse as to what might happen to his equipment if it were not removed immediately from the Seymour school project Respondent Local 139, Engineers, violated both Section 8(b)(4)(i) and (ii)(B) of the Act.

Although it is uncontradicted that Rouse and his employee Moesch were performing services for primary employer Landwehr which supplanted the work of that company's striking employees, the Trial Examiner concluded, purportedly under the authority of *Royal Typewriter Co.*,[1] that because neither Rouse nor Moesch had any knowledge of the dispute between Landwehr and the Engineers, Rouse was, therefore, within the protection of Section 8(b)(4) and Business Agent Shaw's inducement to Moesch and threats to Rouse constituted the aforesaid violations of the Act. The Trial Examiner found that the employer unknowingly performed struck work, and reads *Royal Typewriter* as precluding the application of the "struck work" ally doctrine to such situations. We do not agree either with this reading of *Royal Typewriter*, or with his construction of Section 8(b)(4) or his finding that the employer knowingly performed struck work.

It is true that *Royal Typewriter* holds:

> . . . that an employer is not within the protection of § 8(b)(4) when he knowingly does work which would otherwise be done by the striking employees of the primary employer and where this work was paid for by the primary employer pursuant to an arrangement devised and originated by him to enable him to meet his contractual obligations. . . .[2]

This is not to say, however, that the converse is true, namely, that one who "unknowingly" performs struck work for a given period will thereafter be insulated from pressure from the striking union. Rather, *Royal Typewriter* emphasizes that it is the nature of the work performed by the employer furnishing services to the primary

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[1] *N.L.R.B. v. Business Machine and Office Appliance Mechanics, et al., Local 459, I.U.E., et al.* (*Royal Typewriter Co.*), 228 F.2d 553, 559 (C.A. 2), cert. denied, 351 U.S. 962.

[2] *Id.* at 559.

employer which is critical in determining whether that employer is a neutral or an ally of the primary employer:

> . . . Where an employer is attempting to avoid the economic impact of a strike by securing the services of others to do his work, the striking union obviously has great interest, and we think a proper interest, in preventing those services from being rendered. This interest is more fundamental than the interest in bringing pressure on customers of the primary employer. Nor are those who render such services completely uninvolved in the primary strike. By doing the work of the primary employer they secure benefits themselves at the same time that they aid the primary employer. . . .[3]

Moreover, this interpretation of the ally doctrine was given express approval by the Supreme Court in *National Woodwork Manufacturers Association v. N. L. R. B.*[4] where the Court stated that neutrals lost their protection "against secondary pressure, where the secondary employer against whom the union's pressure is directed has entangled himself in the vortex of the primary dispute."[5]

The relationship between Rouse and Landwehr constitutes precisely such an entanglement in the present case. Landwehr, an excavating business, was unable to perform the excavating work called for in the contract because its employees were out on strike. Accordingly, Landwehr leased a scraper and operator from Rouse for $25 per hour to assist it in completing the contract assignment. Moreover Rouse's operator, Moesch worked under the supervision and control of Landwehr and at the same time that a Landwehr machine was also engaged in grading work. Thus Rouse was completely entangled in the primary's

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[3] *Id.* at 558.

[4] 386 U.S. 612.

[5] *Id.* at 627.

work, the supplanted work of the striking employees, and for which he received benefits while at the same time aiding Landwehr, thus falling within the principles of *Royal Typewriter* and *National Woodwork*.

Royal Typewriter would seem to impose upon an employer the burden of determining whether or not he is engaged in neutral or ally type work. In the *Royal* case, for example, the existence of the strike itself, the receipt of the checks from the primary employer, and picketing in the general area were held to be sufficient notice to the independents there involved to indicate that the work they were doing might well be farmed-out. In the present case, the strike in question had been going on for a week or more at the time Business Agent Shaw attempted his intervention, the strike had received wide publicity because of its economic impact upon the community and the stories of violence which were emerging therefrom. Rouse was asked by Landwehr to help complete a project which Rouse admittedly knew Landwehr could not complete with its own employees, and Rouse was advised by Shaw that he was performing struck work. In these circumstances, we conclude that Rouse was finally and adequately advised that he was performing struck work, and that performance of such work made him an ally of Landwehr in its dispute with the Engineers.

Accordingly, Business Agent Shaw's attempt to persuade Moesch and Rouse to cease working on the project and to remove their equipment did not constitute proscribed secondary activity. The fact that Shaw may have threatened both Moesch and Rouse in attempting to accomplish his purpose does not alter this conclusion, for the distinction between primary and secondary activity is not determined by the peaceful or violent nature of that activity but by the type of work being done by the employer furnishing services to the primary employer and the relation of that work to the primary employer's

work.[6] Accordingly, we do not adopt the Trial Examiner's findings that Respondent, Local 139 violated Section 8(b)(4)(i) and (ii)(B) of the Act as a result of Business Agent Shaw's conduct at the Seymour project, and we shall order that the allegations of the complaint respecting that conduct be dismissed.[7]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board

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[6] *United Steelworkers v. N.L.R.B.*, 376 U.S. 492, 501 (1964); *N.L.R.B. v. International Rice Milling*, 341 U.S. 665, 672 (1951). It is true, of course, that Shaw's statements to Rouse and Moesch to the effect that if the equipment were not removed from the construction site it might be damaged by having an iron bar thrust through the radiator or oil cooler may well have constituted a violation of Section 8(b)(1)(A) of the Act. We find it unnecessary to make such a finding, however. Inasmuch as Shaw's statements were not alleged as such a violation of the Act and because they were similar to other such threatening statements alleged and found as violations of that Section of the Act, such additional findings would only be cumulative.

[7] Member Fanning joins his colleagues in dismissing these allegations of the complaint for the reasons given above. He relies also on the fact that the work Rouse contracted to do for Landwehr, at the very least, was related to the normal operations of Landwehr, one of the primary employers involved in the areawide dispute with Respondents. In these circumstances, for the reasons stated in the dissenting opinion in *Building and Construction Trades Council of New Orleans, AFL-CIO (Markwell and Hartz, Inc.)*, 155 NLRB 319, he finds that the appeals directed to Rouse and his employee, Moesch, constituted primary rather than secondary pressures within the meaning of the Supreme Court's decision in *Local 761, I.U.E. v. N.L.R.B.*, 366 U.S. 667.

For the same reasons, Member Fanning would dismiss the allegations of the complaint that Respondents violated Section 8(b)(i) and (ii)(4)(B) by engaging in the conduct discussed by the Trial Examiner under the headings "The Bloomer Incidents" and "The Kraemer Incidents." In his view, Kraemer and Bloomer were performing work related to the normal operations of Courtney and Plummer, Inc., one of the primary employers involved herein, who had contracted with the State of Wisconsin to construct a highway interchange on U. S. Highway 41, and that, consequently, appeals to Kraemer and Bloomer and their employees asking them to honor the picket lines established in furtherance of Respondents' dispute with Courtney and Plummer constituted primary rather than secondary appeals.

adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders the Respondents, General Drivers and Dairy Employees, Local No. 563, its officers, agents, successors, and assigns, Robert Schlieve, its secretary-treasurer, Local 139, International Union of Operating Engineers, AFL-CIO, its officers, agents, successors, and assigns, Donald Shaw, its business representative, Local Union No. 3203, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and Jerry Jahnke, its business representative, all of Appleton, Wisconsin, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete the name "Lee J. Rouse Construction Co." from paragraphs 1(a) and (b) and 2(b) of Section I and from paragraphs 1(a) and (b) and 2(b) of Section II.

2. Delete the name "Lee J. Rouse Construction Co." from the first and second indented paragraphs of both the Appendix A and B Notices attached to the Trial Examiner's Decision.

IT IS FURTHER ORDERED that the allegations in the complaint to the effect that Respondent Local 139, International Union of Operating Engineers, AFL-CIO, violated Section 8(b)(4)(i) and (ii)(B) of the Act as a result of Business Agent Shaw's conduct at the Seymour project be, and they hereby are, dismissed in their entirety.

Dated, Washington, D. C. June 4, 1969.

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JOHN H. FANNING Member

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GERALD A. BROWN Member

.....

SAM ZAGORIA Member

(Seal) NATIONAL LABOR RELATIONS BOARD

APPENDIX "D"

[Case Nos. 30-CB-221, 30-CB-222, 30-CC-92]

[Caption Omitted in Printing]

TRIAL EXAMINER'S DECISION

Statement of the Case

ROBERT E. MULLIN, Trial Examiner: This case was heard in Appleton, Wisconsin, on September 24-26, 1968, pursuant to charges duly filed and served,[1] and a complaint issued on September 6, 1968. The complaint, as amended at the hearing, presents questions as to whether the Respondent Unions violated Section 8(b) (4) (i) and (ii) (B) and 8(b) (1) (A) of the Act. In their answers, duly filed, the Respondents conceded certain facts with respect to the business activities of the Charging Party and its employer members, but the Respondents denied all allegations that they had committed any unfair labor practices.

All parties appeared at the hearing with counsel. They were given full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence and to argue orally. Oral argument was waived. On October 31, 1968, all counsel submitted thorough and comprehensive briefs.

[2] Upon the entire record in the case and from his observation of the witnesses, the Trial Examiner makes the following:

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[1] The original charges in all three cases were filed on August 1, 1968. First amended charges were filed in 30-CB-222 and 30-CC-92 on August 14, 1968.

Findings of Fact

I. The Employers Involved

Fox Valley Material Suppliers Association (herein Association) is a Wisconsin corporation which exists, in part, for the purposes of collective bargaining with the Respondents on behalf of its employer-members. The latter, seven in number, are known as follows: Badger Highways, Inc. (herein Badger); Calnin & Goss, Inc. (herein Calnin); Courtney & Plummer, Inc. (herein C & P); Landwehr, Inc. (herein Landwehr); H. Schabo Materials, Inc. (herein Schabo); Twin City Concrete Co. (herein Twin City); and Valley Ready Mixed Concrete Co. (herein Valley). Of the foregoing, C & P alone sells building and construction material valued in excess of $1 million to enterprises which themselves are employers engaged in commerce or in industries affecting commerce.

It was undisputed, and the Trial Examiner finds, that by virtue of their membership in the Association, the seven enterprises named above constitute a single employer for the purposes of collective bargaining with the Respondents, and each is, individually, an employer engaged in commerce or in an industry affecting commerce.

In addition to the foregoing, other employers involved in the incidents which figure in this case, are named below:

Concrete Pipe Corporation (herein Concrete Pipe) is a Wisconsin Corporation, engaged at Menasha, in that State, in the manufacture and sale of concrete piping. It annually receives materials and supplies valued in excess of $50,000 directly from points outside the State of Wisconsin, and annually sells products valued in excess of $50,000 to enterprises engaged in the building and construction

industry. In the normal course of its business, Concrete Pipe purchases and receives building materials from C & P.

In addition to its operations as a supplier of building and construction material, C & P has been engaged at all times material herein at Appleton, Wisconsin, as the general contractor, under contract with the State of Wisconsin, for the construction of a highway interchange (herein known as the "Highway 41" Project) for a contract price in excess of $1 million.

Edward Kraemer & Son, Inc. (herein Kraemer), a Wisconsin corporation, is engaged at Appleton, Wisconsin, in the building and construction industry, and, at all times material herein, has been engaged as a bridge construction subcontractor of C & P at the "Highway 41 Project" for a contract price in excess of $150,000.

John F. Bloomer Co., Inc. (herein Bloomer), a Wisconsin corporation, is engaged at Appleton, Wisconsin in the building and construction industry, and at all times material herein, has been engaged as a grading subcontractor of C & P at the "Highway 41 Project" for a contract price in excess of $300,000.

[3] Schwerman Trucking Co. (herein Schwerman), a Wisconsin corporation, is an interstate over-the-road motor carrier and annually receives revenues in excess of $200,000 for transporting goods and commodities across state lines in interstate commerce. In the normal course of its business, Schwerman hauls bulk commodities on behalf of Valley and delivers them to Valley at its ready mixed concrete plant in Appleton.

P. G. Miron Construction Company (herein Miron) is a Wisconsin corporation, engaged as a general contractor in the building and construction industry. Miron's annual revenues from employers engaged in commerce, or in industries affecting commerce, exceed $50,000. At all times

material herein, Miron has been engaged at Neenah, Wisconsin, as the general contractor for the construction of a plant addition on the premises of the Manhatten Rubber Company (herein called the Manhatten Project) for a contract price in excess of $50,000. Further, in the normal course of its business, Miron purchases ready mixed concrete from Twin City.

Schindler Equipment Rental, Inc. (herein Schindler) has been engaged at all times material herein as a subcontractor of Miron at the Manhatten Project and supplies cranes and crane operators to handle and pour ready mixed concrete.

Combined Paper Mills, Inc. (herein Combined Paper) is a Wisconsin corporation engaged at Combined Locks, Wisconsin, in the manufacture of paper products. In the course and conduct of its business, Combined Paper annually ships products valued in excess of $50,000 directly to points outside the State of Wisconsin. At all times material herein, Combined Paper has been engaged in the construction of an addition to its plant, valued at $12 million and called herein the "Papermill Project." Likewise, at all times material, Calnin has been engaged by Combined Paper to perform excavating work at this same project.

Fox Valley Construction Co., Inc. (herein Fox Valley) is a Wisconsin corporation engaged as a general contractor in the building and construction industry. Annually, it has revenues in excess of $50,000 for furnishing services and materials to enterprises which themselves are employers engaged in commerce, or in industries affecting commerce. At all times material herein, Fox Valley has been engaged at Appleton as the general contractor for construction work on an addition to the Outagamie County Airport (herein called the Airport Project).

Lee J. Rouse Construction Co. (herein Rouse), is a Wisconsin corporation engaged in general excavating and earth moving for the building and construction industry. At all times material herein, Rouse has been engaged in performing earth moving at a school construction project in Seymour, Wisconsin (herein called the Seymour project). Whether Rouse was a subcontractor to Landwehr on this project, or engaged in a joint venture with Landwehr, is an issue in this case.

Upon the foregoing facts, the Respondents concede, and the Trial Examiner finds, that all the employer-members of the Association, as well as Conerete Pipe, Kraemer, Bloomer, Schwerman, Miron, Schindler, Combined Paper, Meyer, Fox Valley and Rouse are each employers engaged in commerce or in industries affecting commerce, as defined in Section 2(6) and (7) of the Act.

[4] II. The Labor Organizations Involved

General Drivers and Dairy Employees Local Union 563 (herein called Teamsters, or, Local 563), Local 139, International Union of Operating Engineers, AFL-CIO (herein called Engineers, or, Local 139) and Local 3203, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (herein called Carpenters, or, Local 3203) are labor organizations within the meaning of the Act. It was undisputed, and the Trial Examiner finds, that, at all times material herein, Robert Schlieve, secretary-treasurer of the Teamsters, Jeff Curtin and Marvin DeVries, both business representatives of the Teamsters, Joseph Goetz, business manager of the Engineers, Donald Shaw, business representative of the Engineers, Jerry Jahnke, business representative of the Carpenters, and Jack Jacobson, a representative of the Appleton Building and Construction Trades Council, were likewise agents of their respective labor organizations within the meaning of the Act.

III. The Alleged Unfair Labor Practices

A. *Background and Sequence of Events*

For several years prior to 1968, Local 563 had an agreement with every member of the Association, whereas Local 139 had a contract with only four members, *viz.*, C & P, Badger, Landwehr and Calnin. On May 1, 1968, the collective bargaining agreements with the Teamsters and Engineers had with members of the Association expired. After a breakdown in negotiations as to proposed new contractual terms, the dispute culminated in a strike.

On July 29,[2] Local 563 struck the members of the Association. On July 30, Local 139 struck the four members of the Association with which it had had contractual relations. Thereafter, both the Teamsters and the Engineers engaged in picketing and strike activity, which, at the time of the hearing, was still in progress. The Respondent Carpenters did not call a strike against the members of the Association, or engage in picketing.

Notwithstanding the strike, the members of the Association continued to operate and to do business. The alleged unfair labor practices involved herein arose out of the ensuing conflict between the economic combatants who are parties to this action.

The picket signs used by the Teamsters read: "Employees of Fox Valley Construction Materials Suppliers Association Members Teamsters Local 563 on strike." In some instances the name of the individual employer was inserted. The other side of the placard read "Our only dispute is with Fox Valley Construction Material Suppliers Association." The signs used by the Engineers read "International Union of Operating Engineers, Local 139 on

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[2] All dates here involved occurred in 1968, unless otherwise specified.

strike against the Fox Valley Material Supplier Association." The portion of the sign reading "On Strike" was printed in red and the rest of the lettering was in black.

The testimony discloses that picketing occurred daily at the premises of the struck employers with both the Teamsters and the Engineers frequently engaged in joint picketing at those sites. Sometimes the picket signs of Local 139 appeared outside the premises of an employer [5] who employed no members of that union, as on July 29, and August 5, when the Engineers picketed Valley Ready Mixed. On other occasions, when only Teamster pickets were on the scene, Business Agent Shaw of the Engineers was the sole business representative present.[3] On at least one day,[4] pickets with Engineer signs were at a jobsite in the morning and later, when more pickets arrived, only Teamsters placards were used. Robert Schlieve, the dominant personality in the Teamsters organization, conceded that throughout the strike he maintained close, personal contact with Donald Shaw, principal business agent for the Engineers in the Appleton area. On one occasion, when representatives of the Association met for purposes of negotiations with the Teamsters, and on another occasion when they met with the Engineers, both Shaw and Schlieve were present. Although denied by Schlieve, the record establishes, and the Trial Examiner finds, that throughout the period in question, many of the strike activities of the Teamsters and the Engineers were joint and coordinated.

B. *Preliminary Statement*

The Respondent Unions, in an able brief, contend that the secondary boycott allegations here involved are ill founded and without substance. In support of this posi-

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[3] As at the Manhatten Project on August 10.

[4] At the Kraemer site on July 31.

tion, they argue that the situations presented in the various incidents on which the General Counsel relies are different from those involved in Section 8(b) (4) cases which commonly arise in the construction industry. Basically, it is their contention that in this case the secondary boycott charges involved allegedly secondary employers who provided men and equipment to be used in careful and elaborate coordination with admittedly primary employers to such an extent that the former lost their status as neutrals.

After an analysis of the facts, more fully set forth later in this decision, the Trial Examiner has concluded that most of the incidents in this case involve the type of coordination between primary and secondary employers which is not unique, or different, but rather one which is characteristic of construction work. *N.L.R.B. v. Denver Building and Construction Trades Council,* 341 U.S. 675. In only two instances is there some merit to the argument pressed by the Respondent Unions in this regard, namely, those incidents which are known in the record as "Highway 41" and "Seymour" projects. As to them, the applicability of the Respondents' defense is considered in detail later in this decision.

The General Counsel concedes that at various times throughout the strike the Teamsters and the Engineers have engaged in lawful primary picketing and, conceivably, lawful ambulatory picketing. Apart from this activity, however, the General Counsel and the Charging Party contend that the record abounds in evidence of unlawful Section 8(b) (4) activity on the part of the Respondents and, in several instances, of unlawful 8(b)(1)(A) activity by the Teamsters and Engineers. To the facts in connection with the incidents relevant herein we will now turn.

[6] C. *Alleged Violations of Section 8(b)(4)(i) and (ii)(B); Findings and Conclusions with Respect Thereto*

1. Concrete Pipe

Concrete Pipe Corporation, a manufacturer of concrete products, customarily has a complement of about 30 employees. In the normal course of its daily operations it uses a substantial quantity of sand and stone which it purchases from C & P and Landwehr. The Teamsters have a contract with Concrete Pipe which does not expire until April 1, 1969.

Prior to the outset of the strike against the Association members, Don Koepke, president of Concrete Pipe, had a conversation with Schlieve, in which Koepke thought that he had secured assurances from the Teamsters that, even if a strike began, his company would be able to secure an adequate supply of materials from C & P and Landwehr. On August 5, however, and shortly after the strike started, Schlieve telephoned the office of Concrete Pipe, where he spoke to Jerry P. Dunham, office manager for the firm. After identifying himself, Schlieve declared "I understand you got a load from Courtney & Plummer this morning." When Dunham replied in the affirmative, Schlieve continued "Well, let it be known that that's the last . . . load of stone you'll get from them, or you're out of business." When Dunham protested that C & P had been their supplier for many years, Schlieve responded "You'll just have to find another source of supplies." Schlieve concluded the conversation by asking that Dunham have President Koepke call him and by adding ". . . . our argument isn't with you, it's with Courtney & Plummer."

That same afternoon President Koepke told the employees that his firm would continue to operate as long

as C & P would continue to supply them with their gravel, but that if the employees walked off the job, the plant would be unable to operate and he would have to shut down until the strike ended. Jerome Schoultz, an employee and the steward for Local 563 at Concrete Pipe, went to the union hall at the end of the shift that day and had a conversation with Business Agent DeVries on the question of what the employees should do when pickets appeared. Schoultz testified that DeVries did not state that it was entirely up to the employees as to whether to walk off the job if Teamster pickets arrived at the plant gate. According to Schoultz' credible and uncontradicted testimony, DeVries told him "that if pickets do appear that we actually should walk off."

On August 13, Schlieve had a telephone conversation with President Koepke in which the business agent inquired if the Company had secured a supplier in place of C & P. When Koepke replied in the negative, Schlieve told him that if Concrete Pipe continued to do business with C & P the Teamsters would put up a picket line. He further told Koepke that he would have until noon the next day to find another source of supply or the Union would shut him down. When Koepke protested that such action could constitute a secondary boycott, Schlieve replied, accordingly to Koepke's credible and undenied testimony, "Sonny, you'd better go back to law school before you talk to me about labor law. . . . You can't afford to have your men walking off the job every half an hour. And, once we get them off, we have places to take them [7] where it would take you a day to get them back. You can't afford that." Before terminating the conversation, Schlieve also alluded to other economic steps which the Teamsters would take against the company by resort to the health and welfare provisions in their current contract. He concluded with the statement that Koepke would

"understand" what he meant by reference to such a sanction.[5]

On August 14, Business Agent DeVries visited Koepke at his office, told him that he was there to find out if Concrete Pipe had found another supplier and warned ". . . if you don't find something by noon we're going to put a 24-hours watch on you and on Landwehr."

On August 16, DeVries returned to the plant and sought permission from Office Manager Dunham to address the employees. Dunham acceded and then proposed to accompany DeVries while he talked with the men, but DeVries insisted that Dunham leave the area and the latter did so.

William Keeney, an employee who was present at this meeting, testified that DeVries told them that he was certain they knew that C & P was on strike and that their employer was still obtaining stone from C & P. According to Keeney, DeVries advised them that any time a C & P truck was on the premises they could "legally" walk off the job. When one of the machine operators questioned DeVries as to how an employee could walk off the job and leave something hanging in mid-air such a a rotary spindle and a wet pipe, the business agent replied "Well, legally, you can, and they can't do anything about it." DeVries did not tell the employees that it was entirely up to them as to whether they walked off the job when the pickets appeared. Keeney testified that it was apparent to

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[5] The quotations in this paragraph are from Koepke's testimony. When on the stand, Schlieve did not deny or contradict the testimony which Koepke gave. When asked whether he had ever threatened Koepke that he would shut down Concrete Pipe, Schlieve did not give a direct answer. Instead he answered only by stating that he had advised Koepke that the Teamsters would exercise their rights under the *Moore Drydock* Decision (*Sailors Union of the Pacific* (*Moore Drydock Co.*), 92 NLRB 547) and picket his premises when employees of struck employers delivered material. Koepke was a credible witness and his account of this conversation is found by the Trial Examiner to be an accurate summation of what transpired.

him that since DeVries called the meeting to tell them they could leave the job when C & P trucks appeared, that DeVries wanted them to walk off under those circumstances. This conclusion was reinforced by the fact that only a few days earlier DeVries had told Schoultz, the Teamsters steward at the plant, that if pickets appeared at the premises, the employees *should* walk off. Under these circumstances, it is the conclusion of the Trial Examiner that this was the same import which the employees could draw from DeVries remarks to them on August 16.[6]

In a letter dated September 19, Schlieve wrote Koepke that the company had failed to make health and welfare payments on one Robert Schroeder for the months of October and November 1967. Schlieve demanded arbitration of the grievance and went on to state that if Concrete Pipe did not accede, the union would feel free to take whatever action it deemed appropriate.

[8] Koepke telephoned the Teamsters' office and spoke to DeVries. Koepke reminded the business agent that the Schroeder matter had been discussed by the parties and dropped in December 1967, that the employee Schroeder had been told prior to the termination of his 30-day probationary period that he would have to get work elsewhere and that he had been allowed to remain for a short while longer only as an accommodation. DeVries, however, was adamant that the Teamsters intended to adhere to the literal language of the contract in connection with the case.

On September 21, Koepke mailed the Teamsters a check for $63.32 to dispose of the Schroeder matter and in an accompanying letter protested that he was doing so, notwithstanding his conviction that the union had raised a

[6] The quotations in this paragraph are from the credible, uncontradicted testimony of Keeney.

stale claim that was not subject to arbitration and for which the company was under no legal obligation to pay.

Schlieve's threats to put Concrete Pipe out of business or shut it down unless Koepke quit buying stone from C & P and Landwehr constituted a patent violation of Section 8(b)(4)(ii)(B). *Nassua & Suffolk Building Construction Trades Council, (Theresa Garden Apartments, Inc.)*, 162 NLRB No. 13, TXD p. 10. It was likewise a violation of Section 8(b)(4)(i)(B) of the Act, for Respondent Teamsters, when Business Agent DeVries, in his meeting with the employees of Concrete Pipe, implied that they should walk off the job at anytime that C & P trucks were on the premises. *General Truck Drivers and Helpers Union Local 467 (Jones and Jones, Inc.)*, 171 NLRB No. 90, TXD pp. 4-5.[7]

2. The Manhatten Project

During the summer of 1968, the Manhatten Rubber Company was engaged in the construction of an addition to its plant. The general contractor for the job was P. G. Miron Construction Company. In the course of its work on this contract, Miron rented two cranes and operators from Schindler Equipment Rentals, Inc. The latter began working at the construction site about the middle of July.

On August 10, Schindler had two cranes at the Manhatten site, one being operated by Carl Schindler, presi-

[7] The Respondents contend that the meeting at which DeVries made these remarks was confidential and that inquiry as to what the business agent said was precluded by *Building and Construction Trades Council of Tampa (Tampa Sand and Material)*, 132 NLRB 1564, 1565-1566. In that case the Board held that a business agent's statements to the union membership were not violative of the Act when he reminded them of their rights as individuals not to handle products of primary employers. The protection of that case, however, does not extend to the instant situation where DeVries made the statements here involved in a context which made it clear to the secondary employees that their union expected them to honor the picket lines.

dent of Schindler, and the other by his employee Eugene LeFeber. Both Schindler and LeFeber were members of the Operating Engineers. On this occasion, C & P ready mix trucks were delivering concrete and the Schindler cranes were being used to move the concrete. Overall supervision was being provided by Dave Voss, superintendent for Miron.

At about 10 a.m., Teamster pickets arrived at the scene, and shortly thereafter, Business Agent Shaw appeared. He went immediately to LeFeber and told him "You're handling strikebound material . . . you know, them guys are on strike for quite a while. . . ." Shaw then demanded that LeFeber produce his card in Local 139. When the employee did so, Shaw examined it, wrote down the number of the card, and when LeFeber inquired as to what he was doing, Shaw told him that he was going to try to take the card from him, fine him and kick him out of the Operating Engineers.

Shaw then talked with Schindler who was some distance away. According to Schindler's credible testimony, Shaw told him that he was handling strike bound material, that he should let LeFeber go and that he should quit himself. Schindler did tell LeFeber to leave the scene and the latter departed. Schindler then talked with Voss, the Miron superintendent, about the prospects of quitting, but Voss told him that that would be impossible because the concrete pour then in progress was for a large, solid concrete slab which had to be completed before operations could cease. Schindler then related this to Shaw. The business agent responded by telling Schindler ". . . don't say I didn't warn you . . . you're going to appear before the union court . . . you'll be fined." Thereafter, as he was leaving, Shaw told Voss that "on all your (Miron's) jobs you'll be picketed Monday morning."

The incident involving Schindler and LeFeber occurred at a point about 300 feet distant from where the pickets

were stationed. At all times material Schindler was under contract with Miron and was using his own cranes. On cross-examination by counsel for the Respondent Unions, Schindler was asked if he believed the picketing was directed against his company and Miron. He replied in the affirmative and when further asked for his reason for such an answer he replied "Well, Courtney & Plummer didn't have any union men there. . . ."[8]

Shaw testified that he merely told the Schindler crane operators that there were pickets at the entrance to the premises and that under their contract they were not required to stay on the job. This testimony, however, was totally lacking in any persuasiveness and is not credited by the Trial Examiner. The account of Schindler and LeFeber, on the other hand, was credible and withstood a searching cross-examination by able counsel for the Respondent Unions. For this reason, the Trial Examiner concludes and finds that the incident in question occurred substantially as related by Schindler and his employee.

On the basis of the foregoing facts, the Trial Examiner concludes and finds that the Respondent Engineers, by the actions of Business Agent Shaw described above, coerced Schindler with an object of forcing Schindler and Miron to cease doing business with C & P, thereby violating Section 8(b) (4) (ii) (B) of the Act. It was likewise a violation of the same [10] section of the Act, when Shaw, for the same unlawful object, threatened Voss, Miron's superintendent, after Miron had declined to discontinue the concrete pour with materials supplied by C & P, that the Engineers would picket all of Miron's

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[8] In further support of an earlier finding that the Teamsters and Operating Engineers engaged in a joint and coordinated strategy, it is significant that whereas the picketing at the Manhatten project was conceded by both Shaw and Schlieve to have been conducted solely by the Teamsters, Shaw was the only union official on the scene at the time. Schlieve testified that earlier that morning he had ordered Teamster pickets to report at the Miron site.

projects the following Monday morning. *Local 825, International Union of Operating Engineers (Morin Erection Co.)*, 168 NLRB No. 1; *Local 825, Operating Engineers (American Dredging Co.)*, 168 NLRB No. 34, pp. 3-4; *Laundry, Drycleaning, Industrial, Linen Supply and Dust Control Drivers Union Local 209, International Brotherhood of Teamsters (East Bay Counties Dry Cleaners Association)*, 167 NLRB No. 6, TXD, pp. 14-17. Finally, the threats which Shaw directed at LeFeber to induce that employee to quit working for Schindler, an object of which action was to compel LeFeber's employer and Miron to cease doing business with C & P, constituted a violation of Section 8(b)(4)(i)(B) of the Act. The Trial Examiner so finds. *United Brotherhood of Carpenters, Local 1839 (Kroeter Construction Co.)*, 160 NLRB No. 1, 5-6.[9]

3. The Airport Project

At all times material herein, the Fox Valley Construction Company, not a member of the Association and not involved in a labor dispute with the Respondents, was engaged in the construction of a runway extension at the

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[9] In their brief, the Respondents contend that by such conduct as that of Shaw with respect to LeFeber, and similar conduct as to other members of Local 139 which will be detailed later herein, the business agent was simply exerting his rights under the Supreme Court's decision in *N.L.R.B. v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175. That case, of course, was concerned with the protection afforded a union under the proviso to Section 8(b)(1)(A). The Board, however, has held that the application of that proviso is limited to that section of the Act only. *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)*, 172 NLRB No. 252, pp. 3-4. Contrary to the Respondent's position, the proviso to Section 8(b)(1)(A) accords no sanction to union membership discipline, such as that involved here, which violates the secondary boycott provisions of Section 8(b)(4). *Cf. Bricklayers and Masons Local No. 2, etc. (Weidman Metal Masters)*, 166 NLRB No. 26, p. 2, TXD pp. 6-7; *Glaziers Local Union 1184 (Tennessee Glass Company)*, 164 NLRB No. 19, p. 2; *Laundry, Dry Cleaning, etc., Drivers Union Local 209 (East Bay Counties Dry Cleaners Association)*, 167 NLRB No. 6, TXD pp. 12-17.

Outagamie County Airport. In connection with its operations there, Fox Valley had a batch plant on the site which it owned and operated for mixing all concrete used on the projects. C & P was the principal supplier of the sand and stone which Fox Valley required at this batch plant.

[11] At about 10 a.m. on September 6, pickets appeared at the entrance used by the C & P trucks. Soon thereafter, Business Agent Shaw approached Dennis Sorenson, an employee of Fox Valley and a member of Local 139, who was operating an end loader at the time. Sorenson testified that Shaw asked to see his union book and, after that was produced, Shaw questioned him as to whether he realized that he was working behind a picket line. After Sorenson acknowledged that he knew about the presence of the pickets, Shaw took the employee's name and number from the dues book and, upon handing it back, told him "I hope you can keep this."

Shaw testified that in his conversation with Sorenson he merely expressed the wish that the employee honor the picket line. This account of what occurred, however, was contradicted by the fact that in a letter dated September 16, the secretary of Local 139 notified Sorenson that Shaw had charged that he had found Sorenson working behind a picket line and that on October 1, the employee would be tried on these charges. Further, at the instant hearing, Shaw explained that he felt the charges were justified because, in his view, the work which Sorenson was doing behind the picket line violated the union's constitution.

On the basis of the foregoing, and the conclusion of the Trial Examiner that Sorenson was a credible witness, it is apparent that the action of the business agent was violative of the Act. The threats of reprisal against Sorenson voiced by Shaw on the scene and followed by

the written charges issued by the Operating Engineers were plainly calculated to induce the employee to cease working for Fox Valley, a neutral in this instance, and thereby compel the latter to cease doing business with C & P. By such conduct Respondent Local 139 violated Section 8(b)(4)(i)(B) of the Act. *Los Angeles Building and Construction Trades Council, et al. (Interstate Employers Association, Inc.)*, 170 NLRB No. 170, TXD p. 7.

4. The Papermill Project

During August 1968, several construction projects were in progress on the plant premises of Combined Paper Mills, Inc. The general contractor for this work was C. R. Meyer & Sons. At the time, Combined Paper had approximately 450 production and maintenance employees at the plant, all of them members of the Pulp, Paper & Sulphite Union. Meyer, as the general contractor, had contracts or agreements with numerous building and construction trades unions, including the Laborers, Carpenters, Masons and Cement Finishers and the Teamsters.

On August 29, while Meyer had engaged in work at the Combined Paper premises, a crew of workmen for Calnin & Goss arrived on the scene to repair a broken water line. This job was contracted for by the mill and was unrelated to the Meyer project. At the time, Calnin & Goss, of course, was one of the struck employers in the Association.

Shortly after the Calnin crew arrived, Elwyn F. Nelson, project engineer for Meyer, received a telephone call from Jack Jacobson whom Nelson knew as a representative of the Appleton Building Trades Council. [12] Jacobson inquired as to whether Nelson realized that Calnin & Goss was working on the site. Nelson replied that he had seen the equipment, but that he did not know for whom Calnin & Goss was working. Jacobson then told Nelson that he did not believe that the Teamsters knew that Calnin &

Goss was on the scene, and that he hoped that the men and equipment for that firm would be off the premises before the Teamsters found out. After Jacobson further declared that he did not want any trouble on the job, Nelson suggested that he contact the mill directly.

Soon thereafter, John J. Rouman, chief engineer for Combined Paper, received a telephone call from Jacobson. The latter asked Rouman whether he realized that Calnin & Goss was a struck company. After Rouman conceded that he was unaware of any such fact, Jacobson went on to tell him that if the Teamsters were to learn that Calnin & Goss was on the premises, that union would promptly establish a picket line. Rouman stated that Combined Paper was most anxious to avoid any such development because it had been plagued by strikes all summer. He then asked Jacobson what other companies could be secured to replace Calnin & Goss. After Jacobson volunteered the names of three other firms, Rouman assured him that Calnin & Goss would be asked to leave the job by the end of the day.

Shortly thereafter, Jacobson again called Rouman, this time to tell him that the Teamsters had learned that a Calnin & Goss crew was on the premises and to question Rouman as to what action he proposed to take. Rouman replied that he had already told Calnin & Goss to finish out the day and then get their equipment off the plant property. Jacobson thereupon stated that he would contact the Teamsters office and that if Rouman himself wanted to contact that union, he suggested that a call be made to Teamsters Business Agent Jeff Curtin.

Immediately after concluding his conversation with Jacobson, Rouman telephoned Curtin. The latter indicated to Rouman that he was fully aware of the situation at the plant. Rouman assured him that he had already ordered Calnin & Goss to finish out the day and then get

off the premises. Rouman further stated that since there was some prospect that not all of the equipment would be removed that very night, he would like to have Curtin's assurance that the mere presence of the idle equipment would not provoke a picket line the next day. Curtin acceded to this request and concluded the conversation with a warning that "equipment would be all right to be on the premises, but it better not be operated."[10]

The testimony of both Nelson and Rouman was credible and uncontradicted. Jacobson was never called to the stand and no explanation was offered for his failure to appear. On the basis of the foregoing findings, it is apparent, and the Trial Examiner finds, that Jacobson was acting as an agent or ally of the Teamsters in endeavoring to compel Combined Paper and/or Meyer to cease doing business with Calnin & Goss. By threatening Rouman with a Teamster picket line if Calnin & Goss remained on the job, Jacobson violated Section 8(b)(4)(ii)(B) of the Act. Since he was acting, in this regard, as an agent or ally of the Teamsters, the latter Respondent must be, and is, found responsible for this unlawful conduct. *American Newspaper Guild, Local 11,* 151 NLRB 1558, 1564.

[13] 5. The Seymour Project

Lee Rouse was the operator of Rouse Construction, Inc., a small firm engaged in general excavating. Rouse testified that he had approximately 12 employees in season and from 15 to 20 pieces of equipment. At the time of the incident in question Rouse did not have a contract with Local 139, but by the time of the hearing he had entered into an agreement with the Operating Engineers.

Early in August, Rouse was engaged by Landwehr to supply a scraper and an operator on the school construc-

[10] The quotation is from Rouman's testimony.

tion work known in the record as the Seymour project. At the time, the general contractor on this work was the Huffman Construction Company. Landwehr was one of the sub-contractors.

On about August 15, John Moesch, Jr., a Rouse employee and a member of Local 139, arrived at the Seymour jobsite with a carryall scraper. While the Rouse equipment was in use that morning, a Landwehr employee was operating another machine stripping off the top soil on the site.

Moesch testified, credibly and without contradiction, that about mid-morning, Business Agent Shaw came on the job and questioned him as to whether he realized that a strike was in progress. When Moesch disclaimed any knowledge of a strike, Shaw told him that Moesch was, indeed, on strike and that he would have to get his machine off the site by evening. According to Moesch, Shaw cautioned him that if the machine was not removed "possibly someone might find out . . . that we'd been working there and there'd probably be some damage to the machine." Moesch thereupon quit work and reported back to Rouse that he had been stopped by the business agent for the Operating Engineers.[11]

Rouse testified that after Moesch reported back, he telephoned Shaw for an explanation. According to Rouse, Shaw told him "you know that you're working with Landwehr . . . [which] is on strike. . . . We're not allowing any equipment to work on this site. . . . We also want you to get your machine out of this property . . . today." Rouse testified that up to that time he had no knowledge that Landwehr was on strike. According to Rouse, Shaw concluded the conversation by warning him that the equipment would have to be moved off the

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[11] The quotations in this paragraph are from Moesch's testimony.

property "for your own good . . . you don't want to come back there tomorrow . . . and find an iron bar through each one of those radiators and oil coolers." Rouse testified that when he questioned Shaw as to who would wreak such damage, the business agent replied "Well . . . you know, when those men are on strike . . . they get pretty desperate . . . you know, they're carrying guns already. . . . . They're shooting glass out of trucks. . . ."[12]

On cross-examination by counsel for the Respondent, Rouse testified that when he had been hired by Landwehr the latter had informed him that that firm was under pressure from the Seymour school board to finish the project as promptly as possible. He specifically denied any knowledge of a strike involving the Landwehr employees and testified [14] that when he accepted the contract he had no reason to believe that the work in question had been delayed because of any labor dispute. Rouse's testimony in this connection was completely credible and undenied.

The Respondents assert that, during the incident here in question, Rouse was performing "struck" work and, in fact, was an ally of Landwehr. This defense would be available to the Respondents in the present instance if there was proof that Rouse and his employee Moesch had gone to the Seymour jobsite fully aware of the fact that at that time Landwehr's employees were on strike. As found above, however, there was no evidence in the record that either Rouse or Moesch knew of any dispute between the Engineers and Landwehr, or that they had any knowledge that the Landwehr employees were on strike. Consequently, the Trial Examiner concludes that, under the circumstances here present, Rouse was within the protection of Section 8(b)(4). *N.L.R.B. v. Business Machine*

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[12] The quotations in this paragraph are from Rouse's testimony.

and Office Appliance Mechanics, et al., Local 459, I.U.E., et al. (*Royal Typewriter Co.*), 228 F.2d 553, 559 (C.A. 2), cert. denied, 351 U.S. 962. Further, it must be held, and the Trial Examiner so finds, that by Shaw's inducement of Moesch to quit work, and by his threats to Rouse as to what might happen to the equipment if it was not removed immediately from the Seymour job, Local 139 violated both Section 8(b)(4)(i) and (ii) (B) of the Act. *Local 282, International Brotherhood of Teamsters,* (*Twin County Transit Mix, Inc.*), 137 NLRB 858, 866; *Teamsters, Chauffeurs, etc.* (*Editorial Imparcial, Inc.*), 134 NLRB 895, 901; *Highway Truckdrivers and Helpers, Local 107* (*Riss & Company, Inc.*), 130 NLRB 943, 946-948, enfd., 300 F.2d 317 (C.A. 3).

6. Schwerman Trucking Company at premises of Valley Ready Mix

Valley Ready Mix, one of the members of the Association which Respondent Teamsters had struck, regularly received supplies of cement from a source in Milwaukee. Schwerman Trucking Company, an over-the-road carrier, regularly delivered the bulk cement to the Valley premises.

On August 1, when several Schwerman trucks arrived at the entrance to the Valley plant, there were from 12 to 18 pickets lined up across the driveway, a road that was approximately 30 to 35 feet wide. On this occasion the Schwerman drivers did not attempt to go through the picket line, but waited until their supervisor arrived. When he did so, the supervisor drove the trucks through the picket line and effected delivery that day.

[15] On August 5, Schwerman endeavored to make another delivery. About 7 a.m. when the first truck arrived at Valley, there were approximately 6 to 10 pickets at the entrance. By 8:30, however, when two more Schwerman trucks arrived, there were from 25 to 30 pickets at

the gate. The trucks had been escorted up to the Valley entrance by the local sheriff and from 8 to 10 deputies. There was credible, undenied testimony that both Schlieve and Curtin were present on the picket line at this time.[13] Joseph Martin, foreman for Schwerman, testified that when he spoke to one of them and stated that he had to try to get a truck across the line, he was told "I'll have more men here within minutes." Martin then started the first truck and attempted to drive through the entrance. According to the credible and undenied testimony of Richard Schouten, an official of Valley who was present, when Martin started the truck, Curtin motioned for the pickets to mass in front of it and lean against the side of the vehicle. Schouten testified that the pickets remained in this position until the sheriff and his deputies physically removed them and allowed the truck to pass.

Martin remained on the premises for about 45 minutes. After his truck was unloaded and as he was driving out the gateway, Schlieve jumped on the running board and spoke to him. According to Martin, the Teamsters' official told him that if he were Martin he would return to Milwaukee with the other two trucks, because if an attempt was made to deliver any more cement he (Schlieve) could not guarantee that there would be no violence. Martin testified that after this declaration by Schlieve he abandoned any further efforts to unload the two other truck loads of cement and returned to Milwaukee. At the time of the hearing no Schwerman trucks had made any deliveries to Valley since August 5.[14]

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[13] According to the credible testimony of Richard Schouten.

[14] According to the credible and uncontradicted testimony of Daniel J. Garvey, assistant to the manager of Valley, in addition to Schlieve and Curtin, Teamsters Business Agent DeVries was also present during the picketing, as was Don Shaw, business agent for the Operating Engineers.

[16] By the threats which Schlieve voiced to Martin, Schwerman's foreman, and to the Schwerman drivers that their equipment would be damaged if they persisted in attempting to enter the Valley premises and that violence might ensue if they did not abandon their efforts to deliver cement to Valley, all of which threats were successful in inducing the Schwerman employees to quit work and to cause Foreman Martin to halt any further attempts to deliver cement to the strikebound premises, the Respondent Teamsters violated Section 8(b)(4)(i) and (ii) (B) of the Act. *Local 32, Industrial Union of Marine and Shipbuilding Workers of America (Rawls Brothers Contractors, Inc.)*, 133 NLRB 1077, 1078. By the mass picketing on August 5 which blocked ingress to and egress from the Valley plant, the Respondent Teamsters likewise violated Section 8(b)(1)(A) of the Act. *Local No. 3887, United Steelworkers of America (Stephenson Brick & Tile Company)*, 129 NLRB 6, 7-8, enfd. 290 F.2d 587 (C.A. 5).

7. The Highway 41 Project

C & P was the prime contractor for the State of Wisconsin in the construction of a highway interchange on U.S. Highway 41 on the west approaches to Appleton, Wisconsin. The contract was for a sum substantially in excess of $1,500,000 and in its accomplishment, C & P entered into subcontracts with various subcontractors, among them being Edward Kraemer & Son, Inc., and John F. Bloomer Co., Inc. The subcontractor with Kraemer provided for the construction of certain bridges for a price in excess of $150,000. The subcontract with Bloomer covered excavation and grading for which C & P was to pay over $300,000.

A provision in the contract that C & P had with the State of Wisconsin, which was also incorporated in the subcontracts between C & P and the various subcontractors read as follows:

> (2) . . . the contractor shall furnish (a) a competent superintendent or foreman who is employed by him, who has full authority to direct performance of the work in accordance with the contract requirements, and who is in charge of all construction operations. . . .

The foregoing is one of many provisions that are required to be incorporated and in all agreements involving Federally aided primary highway construction.

In conformity with the above provision, C & P designated Allen Rich, as its project coordinator on the Highway 41 project. Rich, a graduate construction engineer, was on the site at all times when any work was in progress. He himself described his general duties as being that of a "go-between" with the subcontractors, the State Highway Commission, and C & P, in assuring that the project was finished in accord with the plans and specifications. In this connection, he frequently checked with the superintendents for Kraemer, Bloomer and the other subcontractors as to the work those firms were performing. Apart from these responsibilities, when any C & P employees were on the site, Rich was empowered to supervise them in detail as to their work performance. Rich described these latter duties as additional work, in contrast with the more general type of supervision which he had over the employees of the subcontractors and which was exercised only through the respective superintendents of the latter.

The Respondents contend that by virtue of the provision in the contract which C & P had with the State of Wisconsin, set forth above, the subcontractors on the Highway 41 project were, in fact, joint employers, or allies, in the dispute which C & P had with the Respondent Unions. They further contend that the direction which Rich gave to the employees of the subcontractors, in effect, made them

employees of C & P and, therefore, beyond the scope of Section 8(b)(4).

The Respondents' contentions in this connection are not supported by the evidence adduced in this case. The facts with respect to Rich's duties establish that, as to the subcontractors, he acted as a liaison man between them, C & P and the State. Insofar as the employees of the subcontractors were concerned, Rich had no direct control over the manner in which they performed their work, not one was on the C & P payroll and no employer-employee relationship was established as to them and C & P. Moreover, there was no evidence that the subcontrators were owned or controlled by C & P other than the control which C & P had by reason of its prime contractor status. Lastly, there was no evidence offered that the bridge building for which Kraemer was responsible, or the excavating for which Bloomer had contracted, was work which would have been performed by C & P or any other struck firms, but for the strike. Applicable to the situation here is the much quoted language of the Supreme Court in *N.L.R.B. v. Denver Building Trades Council*, 341 U.S. 675, 689-690, where it stated:

> We agree with the Board also in its conclusion that the fact that the contractor and subcontractor were engaged on the same construction project, and that the contractor had some supervision over the subcontractor's work, did not eliminate the status of each as an independent contractor or made the employees of one the employees of the other. The business relationship between independent contractors is too well established in the law to be overridden without clear language doing so.

See also: *Local 761 I.U.E. v. N.L.R.B.*, 366 U.S. 667, 678-681; *Building and Construction Trades Council of New Orleans, AFL-CIO (Markwell & Hartz, Inc.)*, 155 NLRB

319, 326-328, enf'd. 387 F.2d 79 (C.A. 5). Accordingly, and in the light of the foregoing, the Trial Examiner concludes and finds that the relationship between C & P, on the one hand, and Kraemer and Bloomer, on the other, as set forth in the record of this case, was substantially that of contractor and subcontractor in the conventional sense, with each of these three parties being an independent contractor.[15]

[18] a. *The Bloomer Incidents*

Francis Bloomer, president of Bloomer, testified that his firm had from 20 to 50 employees throughout the year, that all the machine operators were members of Local 139, and the current contract with the latter organization would not expire until 1970. Bloomer's excavating work on the Highway 41 project was started in 1967 and had pro-

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[15] Another provision of the contract which C & P had with the State required that the prime contractor perform at least 51 percent of the work covered by the agreement. Apparently, after having sublet substantially in excess of 40 percent of the work involved, and in order to assure compliance with this provision, C & P entered into an arrangement with Hedrich Construction Company, Inc., for the construction of certain culverts. This agreement was different from that with Kraemer and Bloomer, for, in this latter contract, C & P agreed to rent Hedrich's equipment and put Hedrich's men on the C & P payroll.

Initially, a paragraph in the complaint related to various alleged unfair labor practices committed as to the Hedrich operations on the Highway 41 project. At the outset of the hearing, however, the General Counsel moved to strike this allegation, on the ground that the complete picture as to the Hedrich-C & P relationship had only then come to his attention and that from this new information he was satisfied that no violation was involved. Over the vigorous objection of the Respondents, this motion was granted.

In their brief, the Respondents advert to the Hedrich arrangement with C & P and argue that, in fact, it was different from that which existed as to both Kraemer annd Bloomer. The facts, however, as set forth earlier and as disclosed by the record, are to the contrary. The Hedrich relationship was unique and different from that which Kraemer and Bloomer had with C & P, and the General Counsel was correct in promptly conceding that the original allegations as to the Hedrich situation should be stricken.

ceeded, at intervals, to the time which is material to the present proceeding. In the latter part of July and early in August 1968, Bloomer had from 8 to 12 employees on the project. They were at work in the vicinity of certain new ramps on the interchange which were immediately west of Highway 41.

On August 1, Business Agent Shaw appeared at the site and spoke to Bloomer. Present at the time and only a few feet away were Bloomer's superintendent, Herbert Ebert, and four employees. Shaw requested that Bloomer suspended operations at any time a C & P materials truck arrived on the job.[16] Bloomer testified that after he declined to accede to the business agent's request, the latter told him that if a picket line was established his employees either would not or should not (Bloomer could not recall which it was that Shaw said) cross it. According to Bloomer, Shaw told him that this was because of the "rules and regulations . . ." of the Operating Engineers.

The Bloomer employees continued to work at the site until August 5. On that date, pickets from both the Teamsters and the Engineers arrived, and the Bloomer employees announced that they would not work behind the picket line. Bloomer testified that as a result of this incident he did not send any employees back to the Highway 41 project at any time from August 5 to September 4.

[19] Late in August, Bloomer called upon Shaw at his office and sought to persuade him that the excavation work should be allowed to proceed because of the character of the soil would prevent any operations during the latter part of the fall. Notwithstanding Bloomer's references

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[16] Apart from the fact that C & P was the prime contractor on the job, C & P, as noted earlier, was itself primarily responsible for approximately 51 percent of the work involved in the Highway 41 project. In this connection, C & P was also a materials supplier of, among other items, ready mixed concrete.

to the no-strike clause in his agreement with the Engineers, Shaw refused to assure Bloomer that he would be permitted to resume work. Shaw likewise vetoed Bloomer's suggestion that a special, or reserved, gate could be set up for Bloomer's employees.

Thereafter, in an exchange of telephone calls and correspondence with Joe Goetz, secretary-treasurer of Local 139, Bloomer explained that he was anxious to resume operations because of weather conditions and the character of the soil involved and, further, that he proposed to put up a reserved gate for the Bloomer employees. After promising Bloomer that he would consider the latter proposal, on September 3, Goetz finally told him that a reserved gate would not be acceptable to the Engineers.

Notwithstanding this veto by officials of Local 139, on September 3, Bloomer wrote a letter to both Goetz and Shaw wherein he stated that on the following day his company would resume work at the Highway 41 site and that his employees would use a special entrance that would be reserved exclusively for them. The letter set out that a sign at this entrance would read as follows:

> "This entrance is reserved exclusively for employees and suppliers of John F. Bloomer Co., Inc. All other employees and suppliers do not use this entrance."

On the morning of September 4, Bloomer erected barricades at the intersection of Casaloma Drive and College Avenue and posted the sign which he had described in his letter to the Engineers. This was at a point approximately one quarter mile west and one quarter mile north of the intersection of Van Dyke and Spencer, where the pickets had stationed themselves at all times prior thereto.

Bloomer thereupon directed Lawrence Larson, a dragline operator, to move his dragline up to the intersection and proceed to the excavation site. Bloomer then removed

the barricades so as to enable the machine to move through the intersection. Significantly, there were no pickets on the scene as Larson started moving forward. After he had traveled some 400 to 500 feet, however, he was stopped by three pickets with Teamsters signs. Larson asked what would happen if he continued, and the pickets told him that he could be fined or blackballed. After this exchange, Larson stopped his machine, locked it, and told Bloomer that he was quitting because the pickets would not let him continue. From that time until the date of the hearing, Bloomer performed no further work on the Highway 41 project.

[20] The testimony of Bloomer and Larson, set forth above, was credible, undenied and uncontradicted. On the basis of this testimony, the Trial Examiner concludes and finds that the Engineers violated Section 8(b)(4)(ii)(B) by Shaw's conversation with Bloomer in which he predicted trouble on the job if the employer persisted in working on the Highway 41 project and warned that if the employees crossed the picket line they would be violating the Engineer's rules and regulations. The Respondent Engineers similarly violated the same section of the Act when, late in August, Shaw told Bloomer that he would not be permitted to resume work and on September 3 when Goetz likewise told him that he would not be permitted to work on the Highway 41 project. Finally, the Teamsters violated Section 8(b)(4)(i) and (ii)(B) when it ignored the reserved gate which Bloomer had set up and established a picket line that was directed exclusively at Larson, a Bloomer employee.[17] *Local 825, Op-*

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[17] As to the incident on August 5, when, after a joint Teamster-Engineer picket line appeared at the site, all the Bloomer employees walked off the job, the record does not indicate clearly whether C & P employees were present at the time. Since, if the latter was the situation, the picket line could have been primary in character, no violation is found as to this incident.

erating Engineers (Morin Erection Co., Inc.), 168 NLRB No. 1, TXD pp. 6-8; *Local No. 1140 Hod Carriers (Gilmore Construction Co.)*, 127 NLRB 541, 544-545, enforced as to this point, 285 F.2d 397, 402 (C. A. 8); *International Hod Carriers, Local No. 1140 (Economy Forms Corporation)*, 126 NLRB 488, 489, fn. 1, enforced as to this point, 285 F.2d 394 (C.A. 8). *Bricklayers, Local No. 2 (Weidman Metal Masters)*, 166 NLRB No. 26, p. 2.

b. *The Kraemer Incidents*

On the morning of July 31, Kraemer employees were working near what is known in the record as the Spencer Street Bridge. About mid-morning, and after the C & P ready mix trucks arrived, Shaw and several pickets appeared at the scene. Lyle Bodendein, a crane operator for Kraemer and a member of Local 139, testified that Shaw came to him, told him to shut off his machine and quit the job. When Bodendein remonstrated that he had heard of no strike, Shaw told him "Well . . . I'm informing you now that they are on strike, and I want you to quit right now." Bodendein, however, refused to quit because he was in the midst of a concrete pour that was only one-half completed.

Shortly thereafter, while Bodendein was eating lunch with about eight other Kraemer employees, Shaw again appeared and singled out Bodendein. This time, according to the employee, the business agent told him, in the presence of his fellow employees, that "if I didn't quit operating that he [Shaw] would see to it I was called up before the rest of the members of Local 139, and would have to answer for not stopping . . . work when he told me to."

[21] That afternoon, troubled by the various strictures which Shaw had applied to him, Bodendein telephoned the Engineers' office to seek advice. According to the

employee, at this time he spoke to a union representative whom he did not know, but who was completely cognizant of the situation on the Highway 41 project that day. Bodendein testified that, in response to his question as to whether Local 139 was on strike against Kraemer, the union representative told him "No . . . Local 139 is not on strike," but that the latter then said to Bodendein, "I understand that you have two abutments to pour." When Bodendein acknowledged that this was correct, the union representative told him "I'd advise you not to pour the second abutment today." According to Bodendein, the same individual told him he could go back to work when the C & P trucks left the job.

That same morning, Shaw delivered substantially the same type of ultimatum to James Gruber, another Kraemer employee, as he had given to Bodendein. Gruber, operator on an end loader and a member of Local 139, testified that Shaw came up to where he was working and asked, "Have you got an extra $300 . . .?" Gruber testified that Shaw then told him that if he did not quit he would be in the same situation as "the operator up on top of the hill," an obvious reference to Bodendein. After Shaw concluded, Gruber discussed the matter with Earl Glass, his foreman, and when the latter told him that the Engineers could not require him to quit, Gruber continued to work.

On the morning of July 31 the first placards displayed by the pickets were Engineer signs. Later, and after Shaw spoke with Bodendein, more pickets arrived. When this happened, the Engineer signs disappeared and thereafter that day the pickets carried Teamster signs.[18]

On August 1, both Gruber and Bodendein were at work when two pickets arrived; one carrying an Engineer sign

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[18] The foregoing findings are based on the credible, undenied testimony of Allen Rich, project coordinator for C & P.

and the other a Teamster placard. The pickets asked the two employees to honor the picket line. The latter stated that they would and thereupon stopped their machines and performed no further work that day. One of the pickets identified himself to Bodendein as a business agent for the Teamsters.

On August 2 when Bodendein was back on the job, Shaw again appeared, this time with two pickets and a camera. After he had taken a picture of Bodendein's crane, he told the employee "I thought I told you to quit operating . . . I'll personally see to it that you're scratched from the Operating Engineers Union and that you'll never work for a union contractor again." Bodendein then reminded the business agent that Kraemer had a contract with Local 139 which would not expire until 1970 and that this agreement also had a no-strike clause. Shaw's response was the declaration "A lot of these big contractors are going to get hurt . . . A lot of them will be belly up before we get done with them . . .". Shaw then left, after Bodendein had made it clear that he planned to continue working. Bodendein testified that at the time of this incident, no C & P trucks were present or engaged in any concrete pour and that the place where he and Gruber were working on this occasion was about a third of a mile from the point where they had been on July 31.

[22] The Respondent Engineers did not allow either Gruber or Bodendein to indulge for long in any thoughts that they could flaunt with impunity any of Shaw's orders that they cease work. In separate letters, both dated September 18, the Respondent Engineers notified Gruber and Bodendein that they were to appear at a formal hearing on October 1, to answer charges filed by Business Agent Shaw that each of them had violated the union constitution by working behind a picket line and by having

failed to cease work after having been requested to do so by Shaw.

On the afternoon of July 31, the same day that Shaw threatened two Kraemer employees who were members of Local 139, Jerry Jahnke, business agent for the Carpenters, appeared at the site. At the time Kraemer had four carpenters on the job. All of them were members of the Carpenters Union, but not of the local which Jahnke represented. Earl J. Glass, the Kraemer foreman, testified that when Jahnke arrived, the latter told that he did not want any carpenters working while concrete was being poured and that any who did would be subject to a $100 fine. Allen Rich, project coordinator for C & P, testified that at this time he was in the presence of Jahnke when the latter told two of the Kraemer carpenters to get off the jobsite or be fined $100. Rich further testified that on this occasion Jahnke directed one of the two carpenters to carry this message to the other side of the bridge where the two remaining carpenters were working. As a result, all four carpenters quit work immediately and did nothing further that day.

On August 5, Glass, who was himself a member of the Carpenters, along with the four carpenters in Kraemer's employ, called on Business Agent Jahnke at his union office. Glass told Jahnke that neither he nor his men had work permits from Local 3203, that they did not like working without them, and that they wanted to get permits. Jahnke refused to issue any. According to Glass, Jahnke told them that "he was using those permits . . . to keep the hammer over our heads, to keep us from going to work."

As a result of this conversation with Jahnke, Glass returned to the Kraemer jobsite where he told Terry Richards, superintendent for Kraemer, of the conversation at the union office. Richards thereupon shut the job

down. At the time of the hearing, none of the carpenters had gone back to work.

All the testimony as to the incidents involving Kraemer employees, given by Gruber, Bodendein, Glass and Rich was credible, undenied and uncontradicted.[19] On the basis of this testimony, the Trial Examiner [23] concludes and finds that the Respondent Engineers violated Section 8(b)(4)(i)(B) of the Act by threatening fines, union misconduct charges and loss of union membership against Bodendein and Gruber to induce them to quit working for Kraemer and thereby compel their employer to cease doing business with C & P. Moreover, the Carpenter engaged in a similar course of conduct. By the threats which Business Agent Jahnke directed to Foreman Glass and the employees under him that they would be fined and that work permits would be withheld from them in order "to keep the hammer over [their] heads," all obviously designed to compel Kraemer to cease doing business with C & P, the Respondent Carpenters likewise violated Section 8(b)(4)(i) and (ii)(B) of the Act. *Bricklayers and Masons, Local No. 2 (Weidman Metal Masters)*, 166 NLRB No. 26, p. 2; *Local 370, United Association, etc. (Baughan Plumbing and Heating Company)*, 157 NLRB 20, 21; *Lathers Local 252 (I. C. Minium)*, 159 NLRB 550, 551, fn. 1; *I.B.E.W., Local 441 (Jones & Jones, Inc.)*, 158 NLRB 549,

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[19] One further line of testimony was offered by the General Counsel as background evidence on the objective of the Respondent Unions. Robert Watts, job superintendent for the Boulanger Construction Co., testified that his company had a contract for work on an interchange on Highway 41 at Neenah, Wisconsin. According to Watts, on September 25, he met with Shaw to discuss the problems connected with work on this job. Watts testified that Shaw told him the only circumstances under which Boulanger could work on the job without a picket line would be if C & P were off the job. Watts testified that Shaw then told him that because C & P had deposited strikebound material on the job at the Highway 41 interchange in Appleton (the one here involved) "that job was shut down until such time as the dispute with C & P was settled."

554; *Teamsters, Chauffeurs & Helpers Union, Local 279 (Wilson Teaming Company)*, 140 NLRB 164, 166-167.

Similarly, since there was undenied testimony that on July 31 there were Teamster pickets present at the scene when Shaw threatened Gruber and Bodendein and, since on August 1, these two employees were asked to cease work by Teamster pickets, one of whom described himself as a Teamster business agent, the Respondent Local 563 must share responsibility for the work stoppages and the illegal inducement here involved. Consequently, the Trial Examiner finds that on July 31 and August 1, through the conduct of its pickets, the Respondent Local 563 along with the other Respondents in this case, violated Section 8(b)(4)(i)(B) of the Act.[20]

D. *The Alleged Violations of Section 8(b)(1)(A); Findings and Conclusions With Respect Thereto*

The General Counsel and the Charging Party allege that the Respondent Unions engaged in numerous violations of Section 8(b)(1)(A) during the course of the picketing that occurred in July, August and September. Most of the testimony as to these alleged violations was undenied and uncontradicted. The mass picketing which occurred at the premises of Valley Ready Mixed on August 5 and which prevented the ingress and egress of vehicles driven by employees of the Schwerman Trucking Company has been described earlier herein and found to have been a

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[20] Whereas the Respondents rely generally on *Sailors Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547, as support for the type of picketing here involved, the situation presented by the foregoing incident was illustrative of others in this case where the appeal for employee cooperation by work refusal was not limited to primary employees. Consequently, the Respondents can not now escape the finding that such picketing was as much a strike call to the employees of the neutral employers as it was to those of C & P and other primary employers. *N.L.R.B. v. Service Trades Chauffeurs, Salesmen & Helpers*, 191 F.2d 65, 68 (C.A. 2).

violation of Section 8(b)(1)(A) by the Respondent Teamsters. The testimony as to the other incidents here involved is set forth below.

[24] *July 31*

Michael J. Garvey, a truckdriver for Valley, testified that on this date he was delivering a load of plaster to a customer in Freedom, Wisconsin. At a point near the Outagamie Airport a car with two men in it passed his truck and when directly in front of him suddenly slowed down to a speed of less than 10 miles per hour. This continued for some time when the car stopped in the middle of the road and compelled Garvey to do likewise. One of the men in the car then came back to Garvey's truck and attempted to pry open the door on the driver's side. By the time this man succeeded in wrenching the door open, despite Garvey's resistance, his associate joined him. According to Garvey, the two men asked "Don't you know that you're hurting us, breaking the strike . . ." and concluded by warning that if he drove his truck anymore they would run him off the road. At this point the two men departed. When Garvey returned to the Valley premises he was the same two individuals on the picket line in front of the entrance.

On the evening of July 31, Thomas Schouten, another employee of Valley, returned to the Valley premises in a company truck. When he found seven or eight pickets at the west entrance to the plant, to avoid trouble, he drove to an entrance on the other side of the premises. Shortly thereafter he was accosted in the middle of the plant yard by Business Agent Schlieve. The latter testified that he walked on to the employer's property to protest to Schouten that the next time he should slow down in the driveway to avoid running over one of the pickets. Schouten testified that after calling him a "no good

scab," Schlieve thereupon emitted a volley of oaths and obscenities to which Schouten admitted that he replied in kind. Schlieve then spit in Schouten's face. At this point there were six to seven pickets at the west entrance and behind the business agent.[21] Shortly thereafter the night watchman arrived on the scene, order was restored, and Schlieve left the premises.

Schouten then went to another part of the yard where he washed out his truck. After he finished that job, he noticed about five of the pickets moving from the west entrance to the area where the truck was parked. When Schouten got in the truck to drive it to the parking lot, two or three of the pickets picked up rocks off the ground and, as he drove off, several rocks hit the side of his truck.

[25] *August 1*

On the above date, Robert Robbins, a driver working for Calnin & Goss, arrived at the premises of Badger Highways. As he stopped in front of the picket line at the entrance, five or six pickets moved in front of his truck. Several of them asked if Robbins remembered what happened to Schabo's truck. When Robbins told them that he knew nothing of that incident, they told him that the driver of a Schabo truck had his windshield shattered and that the same thing could easily happen to his truck. With that, Robbins backed away from the Badger entrance and made no further effort to enter that day.

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[21] It is likewise relevant, that whereas Schouten was a college student in his early twenties, 5 feet 8 inches tall and weighing 160 pounds, Schlieve was 45 years old, 6 feet 2 inches tall and weighed 220 pounds. At the same time, Schouten, while a witness impressed the Trial Examiner as an immature, opinionated young gentleman who fancied that he could control the encounter with Schlieve by bold references to a non-existent war record and various techniques associated with karate. Schouten's demonstration of juvenility, however, provided no excuse for Schlieve's threatening display of temper and bluster.

The incident to which the pickets were undoubtedly referring had occurred about 9:30 that same morning when Robert Eiting, a driver for Schabo Materials, Inc., arrived at the Badger premises. There were from eight to ten pickets at the entrance.[22] As Eiting attempted to enter, some of the pickets gathered in front of the truck and others pounded on his vehicle. Eiting quickly decided that he would back out of that entrance and try another gate to the premises where there were fewer pickets. As he did so, one of the pickets tossed hot coffee at him through an open window of the truck.

Eiting managed to enter the Badger yard through the other gate and when his truck was loaded with gravel approximately 30 minutes later, he sought to leave by the same gate. As he drove out, six to eight pickets showered the truck with rocks. Some of the rocks came through the open windows of the truck and one went through the windshield.

Daniel Endter, a truckdriver for Twin City, one of the strikebound members of the Association, testified that on this same day, as he drove his ready mix truck past the Badger premises the pickets there shook their fists at him. A few blocks further down the highway, a car pulled in front of him and blocked the roadway. Two men in the car, whom Endter recognized as striking employees of Twin City, then got out of the car and sought to force open the door to Endter's truck. One of them asked if

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[22] Eiting testified that some of the pickets carried placards stating that they were on strike against the Fox Valley Material Suppliers Association (of which Schabo and Badger were members). According to Eiting, there was also one sign carried by a picket which was lettered in red. Schlieve testified that one side of the standard signs used by the Teamsters read "Our only dispute is with the Fox Valley Construction Material Suppliers Association." This sign was in black, whereas Shaw testified that part of the Engineers' sign was lettered in red. It would appear that on the morning in question there were pickets from both Local 563 and Local 139 at the Badger entrance.

Endter would like a "roughing up." When the intruders succeeded in opening the door, one of them attempted to pull Endter out. The latter, however, successfully resisted and, when the two men abandoned their efforts, they warned Endter that he "could tell the rest of the bunch the same thing that would happen to them."[23]

[26] *September 6*

Paul Schmidt, director of safety for C & P, testified that on the above date, after getting a report that a car had blocked one of their drivers who was attempting to make a delivery at the Outagamie Airport, he proceeded to the airport.

According to Schmidt, as he followed two C & P trucks on their route to the airport, an automobile which had passed them earlier, slowed down to speeds of from 10 to 25 miles an hour, and stayed directly in front of them. Schmidt testified that he recognized one of the occupants of the car as a picket he had seen at the C & P premises. As the C & P trucks approached the vicinity of the airport another car took over the lead of the slowly moving caravan. According to Schmidt's credible and undenied testimony, this car was driven by Business Agent Shaw.

When the C & P trucks finally reached the site of the Fox Valley Construction Company at the airport, pickets blocked ingress by walking slowly back and forth across the entrance. After a considerable period of time the trucks were finally able to get through by inching forward slowly. As the trucks moved along, pickets who were not in front of the vehicles kept pounding on them as they went through the driveway. Schmidt testified that present among the pickets at this time, in addition to Shaw, were Teamster Business Agents Curtin and DeVries.

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[23] The quotations in this paragraph are from the credited, undenied testimony of Endter.

Concluded Findings

Earlier herein its was found that the Teamsters and the Engineers, from the outset of the strike, engaged in a coordinated campaign of picketing and other strategems designed to accomplish their objectives. On the basis of the finding of facts set forth above with respect to the incidents which occurred on, or near, picket lines maintained by these Respondents during the period from late July and until September 6, the Trial Examiner concludes and finds that Respondent Local 563 and Respondent Local 139 violated Section 8(b)(1)(A) of the Act by the following acts and conduct.

1. On July 31, by the conduct of pickets in stopping Valley truckdriver Michael Garvey and threatening him with bodily harm.

2. On July 31, by the conduct of pickets in throwing rocks at the truck of Valley driver Thomas Schouten.

3. On July 31, by the conduct of Business Agent Schlieve in spitting in the face of Valley driver Thomas Schouten.

4. On August 1, by engaging in mass picketing and blocking the ingress of Schabo and Calnin trucks attempting to enter the Badger premises, by threatening the drivers of these trucks, and by breaking the windshield on one truck.

5. On August 1, by the conduct of pickets in stopping Daniel Endter, a Twin City driver, assaulting him and threatening him with bodily harm.

[27] 6. On September 6, by the conduct of Business Agent Shaw in harassing and blocking C & P vehicles en route to the Outagamie Airport Project.

7. On September 6, by the conduct of Business Agent DeVries and Curtin, along with pickets, in blocking the ingress of C & P vehicles attempting to enter the Airport project.[24]

IV. The Remedy

Having found that the Respondent engaged in certain unfair labor practices, it will be recommended that they be ordered to cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act. In view of the manifold and serious nature of the violations found as to Respondent Local 563 and Respondent Local 139, it will be recommended that, as to those two unions, broad orders be entered.

Conclusions of Law

1. Badger, Calnin, C & P, Landwehr, Schabo, Twin City and Valley, all of whom are employer members of the Fix Valley Material Suppliers Association, and Bloomer, Combined Paper, Concrete Pipe, Fox Valley, Kraemer, Meyer, Miron, Rouse, Schwerman and Schindler, are, and at all times material herein, have been, employers engaged in commerce, or in an industry affecting commerce within the meaning of the Act.

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[24] On the evening of August 3, Richard J. Schouten, Jr., a salesman for Valley and the son of Richard Schouten, vice-president and general manager of that company, received a telephone call at his home. The caller did not identify himself, but declared to Schouten: "You better stop hauling concrete out or we're going to bomb your house." Neither the General Counsel nor the Charging Party offered any testimony that would tend to establish the identity of the one who made this threat. Under these circumstances, the Trial Examiner will recommend the dismissal of paragraph 14(g) of the complaint which attributes responsibility for this threat to the Respondent Unions.

2. Respondents Local 563, Local 139 and Local 3203, are labor organizations, and Robert Schlieve, Jeff Curtin, Marvin DeVries, Joseph Goetz, Donald Shaw, Jerry Jahnke and Jack Jacobson are agents, all within the meaning of the Act.

3. By inducing and encouraging individuals employed in industries in commerce, or affecting commerce, to refuse in the course of their employment to perform services, with an object of forcing or requiring Bloomer Concrete Pipe, Fox Valley, Kraemer, Rouse, Schwerman and Schindler to cease doing business with the members of the Association, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i)(B) and Section 2(6) and (7) of the Act.

4. By threatening, coercing and restraining Bloomer, Combined Paper, Concrete Pipe, Kraemer, Meyer, Miron, Rouse, Schwerman and Schindler, where an object thereof was to force or require the aforesaid employers to cease doing business with the members of the Association, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

5. By restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondents Local 563 and Local 139 have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

[28] Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, the Trial Examiner hereby issues the following:

ORDER

I. The Respondent, General Drivers, and Dairy Employees, Local No. 563, its officers, representatives, agents, successors and assigns, and the Respondent, Robert Schlieve, its secretary-treasurer shall:

1. Cease and desist from:

(a) Inducing and encouraging employees of John F. Bloomer Co., Inc., Concrete Pipe Corporation, Fox Valley Construction Co., Inc., Edward Kraemer & Son, Inc., Lee J. Rouse Construction Co., Schwerman Trucking Co., and Schindler Equipment Rental, Inc., or of any other person engaged in commerce, or in an industry affecting commerce, to refuse, in the course of their employment, to perform services, with an object of forcing or requiring the aforesaid employers, or any others to cease doing business with the members of the Fox Valley Material Suppliers Association, Inc., or with any other employer or person.

(b) Threatening, coercing, or restraining John F. Bloomer Co., Inc., Combined Paper Mills, Inc., Concrete Pipe Corporation, Edward Kraemer & Son, Inc., C. R. Meyer & Sons, P. G. Miron Construction Co., Inc., Lee J. Rouse Construction Co., Schwerman Trucking Co. and Schindler Equipment Rental, Inc., or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing them to cease doing business with the members of the Fox Valley Material Suppliers Association, Inc., or with any other employer or person.

(c) Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places at its offices, and meeting halls, including all places where notices to its members are customarily posted, copies of the notice attached

hereto as "Appendix A."[25] [29] Copies of said notice, on forms provided by the Regional Director for Region Thirty, after being duly signed by an authorized representative of the Respondent Local 563, and by the Respondent Schlieve, shall be posted by the said Respondents immediately upon receipt thereof and be maintained by Respondent Local 563 for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(b) Promptly after receipt of copies of the said notice from the Regional Director, return to him signed copies for posting by John F. Bloomer Co., Inc., Combined Paper Mills, Inc., Concrete Pipe Corporation, Fox Valley Construction Co., Inc., Edward Kraemer & Son, Inc., C. R. Meyer & Sons, P. G. Miron Construction Company, Lee J. Rouse Construction Co., Schwerman Trucking Co., and Schindler Equipment Rental, Inc., if they be willing, at their places of business, including all places where notices to their employees customarily are posted.

(c) Notify the Regional Director for Region Thirty, in writing, within 20 days from the receipt of this Decision, as to what steps they have taken to comply herewith.[26]

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[25] In the event that this recommended Order is adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[26] In the event that this recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region Thirty, in writing within 10 days from the date of this Order what steps Respondents have taken to comply herewith."

II. The Respondent, Local 139, International Union of Operating Engineers, AFL-CIO, and the Respondent, Donald Shaw, its business representative, shall:

1. Cease and desist from:

(a) Inducing and encouraging employees of John F. Bloomer Co., Inc., Concrete Pipe Corporation, Fox Valley Construction Co., Inc., Edward Kraemer & Son, Inc., Lee J. Rouse Construction Co., Schwerman Trucking Co., and Schindler Equipment Rental, or of any other person engaged in commerce, or in an industry affecting commerce, to refuse in the course of their employment to perform services, with an object of forcing or requiring the aforesaid employers, or any others, to cease doing business with the members of the Fox Valley Material Suppliers Association, Inc., or with any other employer or person.

(b) Threatening, coercing, or restraining John F. Bloomer Co., Inc., Combined Paper Mills, Inc., Concrete Pipe Corporation, Edward Kraemer & Son, Inc., C. R. Meyer & Sons, P. G. Miron Construction Co., Inc., Lee J. Rouse Construction Co., Schwerman Trucking Co. and Schindler Equipment Rental, Inc., or any other person engaged in commerce, or in an industry affecting commerce, with an object of forcing them to cease doing business with members of the Fox Valley Material Suppliers Association, Inc., or with any other employer or person.

[30] (c) Restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places at its offices and meeting halls, including all places where notices to its members customarily are posted, copies of the notice attached

hereto as "Appendix B."[27] Copies of said notice, or forms provided by the Regional Director for Region Thirty, after being duly signed by an authorized representative of the Respondent Local 139, and by the Respondent Shaw, shall be posted by the said Respondent immediately upon receipt thereof and be maintained by Respondent Local 139 for 60 consecutive days thereafter in conspicuous places where notices to members customarily are posted. Reasonable steps shall be taken by Respondents to insure that the said notices are not altered, defaced, or covered by any other material.

(b) Promptly after receipt of copies of the said notices from the Regional Director, return to him signed copies for posting by John F. Bloomer Co., Inc., Combined Paper Mills, Inc., Concrete Pipe Corporation, Fox Valley Construction Co., Inc., Edward Kraemer & Sons, Inc., C. R. Meyer & Sons, P. G. Miron Construction Company, Lee J. Rouse Construction Co., Schwerman Trucking Co., and Schindler Equipment Rental, Inc., if they be willing, at their places of business, including all places where notices to their employees customarily are posted.

(c) Notify the Regional Director for Region Thirty, in writing, within 20 days from the receipt of this Decision, as to what steps they have taken to comply herewith.[28]

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[27] In the event that this recommended Order is adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[28] In the event that this recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region Thirty, in writing, within 10 days from the date of this Order what steps Respondents have taken to comply herewith.

III. The Respondent, Local Union No. 3203, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, and the Respondent, Jerry Jahnke, its business representative, shall:

[31] 1. Cease and desist from:

(a) Inducing and encouraging employees of Edward Kraemer & Son, Inc., to refuse in the course of their employment to perform services, with an object of forcing or requiring the aforesaid employer to cease doing business with the members of the Fox Valley Material Suppliers Association, Inc.

(b) Threatening, coercing, or restraining Edward Kraemer & Son, Inc., with an object of forcing it to cease doing business with members of the Fox Valley Material Suppliers Association, Inc.

2. Take the following affirmative action, which is necessary to effectuate the policies of the Act:

(a) Post in conspicuous places at its offices and meeting halls, including all places where notices to its members customarily are posted, copies of the notice attached hereto as "Appendix C."[29] Copies of said notice, on forms provided by the Regional Director for Region Thirty, after being duly signed by an authorized representative of the Respondent Local Union 3203, and by the Respondent Jahnke, shall be posted by the said Respondent immediately upon the receipt thereof and be maintained by Respondent Local Union 3203 for 60 consecutive days thereafter in conspicuous places, including all places where notices to members customarily are posted. Reasonable steps shall be taken by Respondents to insure that the

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[29] In the event that this recommended Order is adopted by the Board, the words, "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

said notices are not altered, defaced, or covered by any other material.

(b) Promptly after receipt of copies of the said notice from the Regional Director, return to him signed copies for posting by Edward Kraemer & Son, Inc., if the latter be willing, at its place of business, including all places where notices to employees customarily are posted.

(c) Notify the Regional Director for Region Thirty, in writing, within 20 days from the receipt of this Decision, as to what steps they have taken to comply herewith.[30]

IV. Paragraph 14(g) of the complaint is dismissed.

Dated at Washington, D. C.

/s/ ROBERT E. MULLIN
Trial Examiner

Appendix A

Form NLRB-4633 (11-65) TXD-40-69

NOTICE

To All Members of General Drivers and Dairy Employees, Local No. 563

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in Order to Effectuate the Policies of the National Labor Relations Act (As Amended)

we hereby notify you that:

WE WILL NOT induce or encourage employees of JOHN F. BLOOMER CO., INC., CONCRETE PIPE

[30] In the event that this recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region Thirty, in writing within 10 days from the date of this Order what steps Respondents have taken to comply herewith."

CORPORATION, FOX VALLEY CONSTRUCTION CO., INC., EDWARD KRAEMER & SON, INC., LEE J. ROUSE CONSTRUCTION CO., SCHWERMAN TRUCKING CO., AND SCHINDLER EQUIPMENT RENTAL, INC., or of any other person engaged in commerce, or in an industry affecting commerce, to refuse, in the course of their employment, to perform services, with an object of forcing or requiring the aforesaid employers, or any other, to cease doing business with the members of the Fox Valley Material Suppliers Association, Inc., or with any other employer or person.

WE WILL NOT threaten, coerce, or restrain JOHN F. BLOOMER CO., INC., COMBINED PAPER MILLS, INC., CONCRETE PIPE CORPORATION, EDWARD KRAEMER & SON, INC., C. R. MEYER & SONS, P. G. MIRON CONSTRUCTION CO., INC., LEE J. ROUSE CONSTRUCTION CO., SCHWERMAN TRUCKING CO., AND SCHINDLER EQUIPMENT RENTAL, INC., or any other person engaged in commerce, with an object of forcing them to cease doing business with the members of the FOX VALLEY MATERIAL SUPPLIERS ASSOCIATION, INC., or with any other employer or person.

WE WILL NOT restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

GENERAL DRIVERS AND DAIRY EMPLOYEES, LOCAL 563
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

Dated ..... By .....
(Robert Schlieve, Secretary-Treasurer)

Appendix B

Form NLRB-4633 (11-65) TXD-40-69

NOTICE

To All Members of Local 139, International Union of Operating Engineers, AFL-CIO

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in Order to Effectuate the Policies of the National Labor Relations Act (As Amended)

we hereby notify you that:

WE WILL NOT induce or encourage employees of JOHN F. BLOOMER CO., INC., CONCRETE PIPE CORPORATION, FOX VALLEY CONSTRUCTION CO., INC., EDWARD KRAEMER & SON, INC., LEE J. ROUSE CONSTRUCTION CO., SCHWERMAN TRUCKING CO., AND SCHINDLER EQUIPMENT RENTAL, INC., or of any other person engaged in commerce, or in an industry affecting commerce, to refuse, in the course of their employment, to perform services, with an object of forcing or requiring the aforesaid employers, or any others to cease doing business with the members of the Fox Valley Material Suppliers Association, Inc., or with any other employer or person.

WE WILL NOT threaten, coerce, or restrain JOHN F. BLOOMER CO., INC., COMBINED PAPER MILLS, INC., CONCRETE PIPE CORPORATION, EDWARD KRAEMER & SON, INC., C. R. MEYER & SONS, P. G. MIRON CONSTRUCTION CO., INC., LEE J. ROUSE CONSTRUCTION CO., SCHWERMAN TRUCKING CO., AND SCHINDLER EQUIPMENT

RENTAL, INC., or any other person engaged in commerce, or in an industry affecting commerce, with an object of forcing them to cease doing business with the members of the FOX VALLEY MATERIAL SUPPLIERS ASSOCIATION, INC., or with any other employer or person.

WE WILL NOT restrain or corce employees in the exercise of the rights guaranteed in Section 7 of the Act.

LOCAL 139, INTERNATIONAL UNION
OF OPERATING ENGINEERS,
AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

Dated ..... By .....
(Donald Shaw, Business Representative)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 2nd Floor, Commerce Building, North 4th Street, Milwaukee, Wisconsin, 53203 (Tel. No. 414 272-3861).

Appendix C

Form NLRB-4633 (11-65) TXD-40-69

NOTICE

To All Members of Local Union No. 3203, United Brotherhood of Carpenters & Joiners of America, AFL-CIO
Pursuant to The Recommended Order of a Trial Examiner of the National Labor Relations Board
and in Order to Effectuate the Policies of the National Labor Relations Act
(As Amended)

we hereby notify you that:

WE WILL NOT induce or encourage employees of EDWARD KRAEMER & SON, INC., to refuse, in the course of their employment, to perform services, with an object of forcing or requiring the aforesaid employer to cease doing business with the members of the FOX VALLEY MATERIAL SUPPLIERS ASSOCIATION, INC.

WE WILL NOT threaten, coerce, or restrain EDWARD KRAEMER & SON, INC., with an object of forcing it to cease doing business with the members of the FOX VALLEY MATERIAL SUPPLIERS ASSOCIATION, INC.

LOCAL UNION NO. 3203, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

Dated ..... By .....
(Jerry Jahnke, Business Representative)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 2nd Floor, Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin, 53203 (Tel. No. 414 272-3861).

APPENDIX "E"

179 NLRB No. 131

DECISION AND ORDER

On August 11, 1969, Trial Examiner Marion C. Ladwig issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in and were engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents and the General Counsel filed exceptions to the Trial Examiner's Decision and supporting briefs and the Charging Party filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations[1] of the Trial Examiner.

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[1] We agree with the Trial Examiner that a broad order is justified in this case because of the Teamsters' and Operating Engineers' earlier violations of the secondary boycott provisions of the Act, as found by the Board in *General Drivers and Dairy Employees Local Union 563, et al. (Fox Valley Material Suppliers Association, Inc.)*, 176 NLRB No. 51. Additionally, we note that broad orders have also issued against these same Unions in *General Teamster, Warehouse and Dairy Employees, Local No. 126*, et al., 175 NLRB No. 86 and in *General Drivers and Dairy Employees, Local Union 563 & Fox Valley Construction Materials Suppliers Association, Inc.*, 179 NLRB No. 109. However, the Trial Examiner inadvertently failed to conform the Notices in Appendices A & B with the broad language of his recommended Order. We therefore amend the Notices to provide therefor.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that Respondents, General Drivers and Dairy Employees, Local Union 563 and its agent, Jeffrey Curtin; International Union of Operating Engineers, Local 139 and its agent, Donald Shaw, Appleton, Wisconsin, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Amend the first paragraph of Appendix A and Appendix B to read:

WE WILL NOT induce or encourage employees of EDWARD KRAEMER & SONS, GREAT NORTHERN CONTAINER CORP., or of any other person engaged in commerce, or in an industry affecting commerce, to refuse, in the course of their employment, to perform services, with an object of forcing or requiring the aforesaid persons, or any others to cease doing business with COURTNEY & PLUMMER, INC., with any other member of Fox Valley Material Suppliers Association, Inc., or with any other person.

2. Add as the second paragraph of Appendix A and substitute for the second paragraph of Appendix B, the following language:

WE WILL NOT threaten, coerce or restrain EDWARD KRAEMER & SONS, GREAT NORTHERN CONTAINER CORP., or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring it to cease doing business with COURTNEY & PLUMMER, INC., with

any other member of Fox Valley Construction Materials Suppliers Association, or with any other person.

Dated, Washington, D.C.

.....

FRANK W. McCULLOCH Chairman

.....

GERALD A. BROWN Member

.....

SAM ZAGORIA Member
National Labor Relations Board

(SEAL)

APPENDIX "F"

[Case No. 30-CC-112]

[Caption Omitted in Printing]

TRIAL EXAMINER'S DECISION

Statement of the Case

MARION C. LADWIG, Trial Examiner: This case was tried at Oshkosh, Wisconsin, on June 3, 1969,[1] pursuant to a charge filed on April 25, and amended on April 29, by Fox Valley Construction Materials Suppliers Association, Inc., herein called the Association, against the Respondents (General Drivers and Dairy Employees, Local Union 563, herein called the Teamsters, its agent, Jeffrey Curtin, and International Union of Operating Engineers, Local 139, herein called the Operating Engineers, and its agent, Donald Shaw), and pursuant to a complaint issued May 7.

The primary employer, Courtney & Plummer, Inc., herein called C & P, was the general contractor on the Highway 41 Project, where the Teamsters and Operating Engineers began picketing in July 1968, when Edward Kraemer & Sons, Inc., herein called Kraemer, was the bridge construction subcontractor on the job. In April, after the winter shutdown, Kraemer resumed work, using entrances reserved for the subcontractors. The two Unions picketed the reserved entrances. On June 4 (1 day after the trial of this case), the Board rejected, in an earlier proceeding, the Unions' contention that Kraemer was not a neutral employer.

[2] The main issues are (a) whether the Unions' picketing at the reserved entrances on this project (and

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[1] All dates, unless otherwise indicated, are in 1969.

the Teamsters' picketing at a reserved gate on a smaller project) were for an unlawful secondary objective, and (b) whether the appeal to Kraemer's employees and the threat to continue picketing were also unlawful, in violation of Section 8(b)(4)(i) and (ii) (B) of the National Labor Relations Act, as amended.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs filed by the General Counsel, the Respondents, and the Association, I make the following:

Findings of Fact

I. The Business of the Employers and the Unions Involved

C & P, a Wisconsin corporation, is engaged in Appleton, Wisconsin, in the business of furnishing building materials to the building and construction industry, and annually sells products valued in excess of $1 million to enterprises which are themselves employers engaged in commerce or in industries affecting commerce. As general contractor on the Highway 41 Project, it has a contract with the State of Wisconsin for a price of $1 million to construct the highway interchange. About April 25 and thereafter, it was also engaged at the Appleton plant of Great Northern Container Corp., herein called Great Northern, extending a driveway, building a culvert, and supplying engineered fill, for a contract price in excess of $7,000. Great Northern, a Wisconsin corporation, is engaged in manufacturing corrugated shipping containers and plastic formed items, and annually purchases goods valued in excess of $50,000 directly from outside the State. Kraemer, a Wisconsin corporation, was engaged as a bridge construction subcontractor of C & P at the Highway 41 Project for a contract price in excess of $150,000. The Association, a Wisconsin corporation with its princi-

pal offices in Appleton, is engaged in collective bargaining on behalf of C & P and other employer-members. The Union admits, and I find, that C & P and other employer-members of the Association, Great Northern, and Kraemer are employers engaged in commerce or in industries affecting commerce as defined in Section 2(6) and (7) of the Act, and that the Teamsters and Operating Engineers are labor organizations within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. *Highway 41 Project*

1. Neutrality of Kraemer

As in the earlier proceeding (involving the Teamsters, Operating Engineers, another union, and their agents), *General Drivers and Dairy Employees Local Union 563 et al. (Fox Valley Material Suppliers Association, Inc.)*, 176 NLRB No. 51, decided June 4, 1969, the Respondents contend that Kraemer was not an independent contractor, that it was "subject to any lawful primary activity to which the acknowledged primary employer [C & P] is susceptible." In that earlier case, the Board adopted Trial Examiner Robert E. Millin's finding that the relationship between C & P and Kraemer on the Highway 41 Project "was substantially that of contractor and subcontractor in the convention sense," and that Kraemer was an independent contractor. The evidence in the present case (being much the same as the evidence introduced on the matter in the earlier case) clearly supports that finding. According, I find that Kraemer was a neutral employer on the Highway 41 Project.

[3] #### 2. Picketing at reserved entrances

On Monday, April 21, following the winter shutdown, C & P began preparations for the resumption of work on

the Highway 41 Project by placing crushed stone on the driveways. The following afternoon, it sent letters to the Teamsters and the Operating Engineers, notifying them that separate gates, Nos. 1, and 2, would be established for its own use, and Nos. 3, 4, and 5 for the "employees and suppliers" of other employers—clearly referring to Kraemer and other subcontractors. There is no contention that the "reserved gate" signs were ambiguous or misleading. On April 23, the signs were posted at the five driveways, which Teamsters picket Albert Pelz admitted were the only accessible entrances to the project, because of the many ditches and the absence of roads. The same day, Kraemer resumed work on the project, under its subcontract to construct four bridges at the highway interchange.

Using neutral Gates 3 and 4, Kraemer employees worked on April 23 and 24. On both days, the Teamsters and Operating Engineers confined their picketing to primary Gates 1 and 2. However on Friday, April 25, the Unions began picketing also at neutral Gates 3 and 4, and inside Neutral Gate 5. (The Teamsters picket signs read on one side, "Fox Valley Material Suppliers Association, On Strike, Teamsters Local 563," and on the other side, "Our Only Dispute is With Fox Valley Material Suppliers Association." The Operating Engineers' picket signs read "On Strike" against the Association.) The two Unions coordinated their picketing on this project. On April 24, Operating Engineers Business Representative William E. Stillman told Kraemer crane operator Richard W. Yanke at the project that there was "liable to be picketing the next day." On April 25, a Teamster picket line was placed at the neutral Gate 3, the entrance which Yanke had been using.

Kraemer's employees refused to cross the picket lines. Being unable to perform the work, Kraemer signed a re-

lease of its subcontract on May 12, and C & P took over the bridge construction with its own employees.

The morning after Kraemer removed part of its equipment from the project but left its crane, Teamsters picket Pelz talked to Operating Engineers Business Representative Donald Shaw at neutral Gate 4. In Pelz' words, "I asked Shaw what we should do in case they came after the crane and he said if they were coming after it to let them take it, but if they wanted to bring anything in, be sure and picket it strong." Pelz reported this conversation to Teamsters Business Representative Jeffrey Curtin (who had given instructions to picket the whole project), and Curtin responded, "Good. As long as they're taking it out and not bringing it in." When asked why they were picketing at the Highway 41 Project (and also at the Great Northern Project, discussed later), picket Pelz testified that although not told outright, they "took it for granted" that it was to keep the union contractors out, "so as to get our [C & P] contract signed." (Kraemer was a union contractor, with a current agreement with the Operating Engineers.) Pelz also testified that when he and picket Kautz went to the union hall on April 25, Business Representative Curtin "told us Kraemer was moving in [at the Highway 41 Project] and we were supposed to go over there and picket."

[4] 3. Appeal and threat

On Monday morning, April 28 (the second day the neutral gates were picketed), Operating Engineers Business Representative Shaw went to neutral Gate 3 where two Kraemer employees were present outside the picket line. One of them, crane operator Yanke, asked Shaw "if the strike pertained to us, if we were legal to go in or not." Shaw told them that "if we went in, it would make it that much harder to make a settlement," or words to that effect. (This evidence by Yanke is undisputed.)

Later that morning, Kraemer Project Engineer Joseph L. Steffes telephoned Shaw and asked if the Operating Engineers was striking, or had any dispute with, Kraemer. Shaw answered no, and Steffes said, "Well, we would like to go in and build this bridge." Shaw responded, "If we let you go in and work, we'll be destroying our bargaining position with Courtney and Plummer." Steffes then asked him "if the pickets would be on the site on future days, and he replied yes, they would." When asked about moving some of the equipment from the site, Shaw "said he could arrange to have the pickets lifted when we wanted to remove this equipment." (I discredit Shaw's denials, and credit this testimony by Steffes, who appeared to be a trustworthy witness.)

B. *Great Northern Project*

From April 25 through May 7, the Teamsters picketed across the entire rear entrance to the Great Northern plant. The driveway had been divided into two sections, with rope and iron stakes separating the west side (leading to the rear loading dock) from the east side (leading to C & P's construction area, where C & P was widening and lengthening the driveway, building a culvert, and placing engineered fill in preparation for an addition to the plant). C & P had posted "reserved gate" signs, designating the west side of the driveway as Gate 1 for the use of Great Northern, and the east side as Gate 2 for C & P. On two occasions, the Gate 2 entrance was enlarged to accommodate large C & P trucks. All C & P employees used Gate 2. There is no contention that the "reserved gate" signs were either misleading or confusing.

On the first day of the picketing, Teamsters Business Representative Marvin DeVries instructed pickets Kautz and Pelz to extend the picketing forward to the west where union freight haulers were entering, because "maybe they [union drivers] would recognize the [picket] sign."

The pickets did so for about an hour, and then Teamsters Business representative Curtin told them to restrict the picketing to the driveway. The picketing continued until C & P removed its equipment on May 7.

C. *Contentions and Concluding Findings*

The General Counsel and the Association contend that the picketing near the neutral entrances at both the Highway 41 Project and the Great Northern construction site, the personal appeal and threat at the highway site, and the picketing near the Great Northern motor freight entrance were for the unlawful purpose of inducing employees of Kraemer, Great Northern, and others to withhold their services, to force the employers to cease doing business with C & P.

[5] In addition to their rejected contention that Kraemer was not a neutral employer, the Respondents contend (a) that Kraemer's bridge construction work at the Highway 41 Project was "related" to the normal operations of C & P, the primary employer, in constructing the highway interchange, entitling the Unions to subject both employers to the same economic pressures; (b) that the physical layout of the entrances to the two construction sites did not "create the controlled, limited access necessary to invoke the protections of a valid reserved gate system"; and (c) that the "reserved gates" at both sites were "contaminated, used by parties who were to be excluded from them according to the signs."

In making the contention (a) about the work being "related" at the highway site, the Respondents argue that *Building and Construction Trades Council of New Orleans, AFL-CIO (Markwell and Hartz, Inc.)*, 155 NLRB 319 (1965), enfd. 387 F.2d 402 (5 Cir. 1967), was erroneously decided. They urge that the ruling in *General Electric case, Local 761, International Union of Electrical, Radio and*

Machine Workers. AFL-CIO (General Electric Co.) v. N.L.R.B., 366 U.S. 667 (1961), involving picketing at the premises of a struck manufacturer, should be applied to their strike activity at this construction project where the general contractor was the primary employer, rather than the more restrictive *Moore Dry Dock* standards, *Sailors' Union of the Pacific (Moore Dry Dock Co.)*, 92 NLRB 547, 549 (1950). The same position was taken by Member Fanning, dissenting in part in the above-mentioned earlier proceeding, 176 NLRB No. 51, fn. 7, where his view was stated that Kraemer and another subcontractor "were performing work related to the normal operations of Courtney and Plummer, Inc. . . . who had contracted with the State of Wisconsin to construct a highway interchange on U.S. Highway 41, and that, consequently, appeals to Kraemer and [another subcontractor] and their employees asking them to honor the picket lines established in furtherance of Respondents' dispute with Courtney and Plummer constituted primary rather than secondary appeals." The majority of the three-member panel in that case held that the appeals were secondary. I there find that although Kraemer's work on the highway project was related to the work being performed by primary employer C & P, the picketing, appeal, and threat directed exclusively at Kraemer and its employees were secondary. (The Respondents do not contend that C & P's construction work at the Great Northern site was related to the normal operation of the plant.

Concerning the contention (b), the Respondents argue that there were no fences or gates at the highway site, "only poles with a sign attached," and that although the driveway at Great Northern was divided by "a string [rope] tied to a series of stakes," there was "a movable saw-horse at the end nearest the public road," permitting the divider to be moved to accommodate large trucks entering the C & P side. However, the five driveways

where the reserved gate signs were posted at the highway site were the only accessible entrances to the project, and the divided driveway at the other site clearly separated the plant entrance from the C & P entrance. I therefore reject the contention, and find that the reserved entrances adequately provided the controlled, limited access necessary for establishing separate gates for primary and secondary employers.

Concerning the remaining contention (c), that the reserved entrances at both sites were "contaminated," this contention is clearly a mere afterthought. The picketing was not extended to the neutral entrances because of any claim that employees or suppliers of C & P were using them. Moreover, there is evidence of only one instance of an employee or supplier of C & P entering at a neutral gate. Teamsters [6] Business Representative Curtin testified that about 11 a.m., April 25, a C & P truck entered Gate 5. (That was after Curtin had already given instructions to picket the entire project.) Regardless of whether this one instance would have justified picketing at Gate 5, it would not have justified the picketing at neutral Gates 3 and 4, which were being picketed despite their sole use by employees of secondary employer Kraemer. (I further find that there was no commingling of gates when a truck uses the proper entrance, but turns around at another entrance.)

Having rejected the Respondent's defenses, I find that the Teamsters and Operating Engineers on and after April 25 picketed near entrances reserved for neutrals at the Highway 41 Project, for a secondary objective of forcing Kraemer to cease doing business with C & P, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. I also find that the Teamsters on and after April 25 picketed near the entrance reserved for Great Northern, and on April 25 near the motor freight entrance, at the

Great Northern plant for a secondary objective of forcing Great Northern to cease doing business with C & P, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. I further find that on April 28, Operating Engineers' agent, Business Representative Shaw, appealed to Kraemer employees to cease work (by telling them that their working on the highway project would make it harder for the Operating Engineers to reach a settlement with C & P), in violation of Section 8(b)(4)(i)(B), and threatened Kraemer with continued picketing, in violation of Section 8(b)(4)(ii)(B) of the Act—both the appeal and the threat being for an object of forcing Kraemer to cease doing business with C & P.

Conclusions of Law

1. By picketing on and after April 25 near neutral entrances to the Highway 41 Project, the Respondents engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

2. By picketing on and after April 25 near the rear entrance, and on April 25 near the motor freight entrance, to the Great Northern plant, the Teamsters and Business Representative Curtin violated Section 8(b)(4)(i) and (ii)(B) of the Act.

3. By appealing on April 28 to Kraemer employees not to cross the picket line at the Highway 41 Project, the Operating Engineers and Business Representatives Shaw violated Section 8(b)(4)(i)(B) of the Act.

4. By threatening Kraemer on April 28 with continued picketing near the entrances reserved for neutrals at the Highway 41 Project, the Operating Engineers and Shaw violated Section 8(b)(4)(ii)(B) of the Act.

The Remedy

Having found that the Respondents have committed certain unfair labor practices, I shall recommend that they be ordered to cease and desist from such conduct, and to take affirmative action, which I find necessary to remedy and to remove the effect of the unfair labor practices and to effectuate the policies of the Act.

Because of the Teamsters' and Operating Engineers' earlier violations of the secondary boycott provisions in the Act, as found by the Board in the above-mentioned *General Drivers 563* case, 176 NLRB No. 51 (1969), I shall recommend the issuance of broad orders.

[7] Accordingly, on the basis of the foregoing findings and conclusions, and on the entire record, I recommend pursuant to Section 10(c) of the Act, issuance of the following:

ORDER

A. Respondents, General Drivers and Dairy Employees, Local Union 563, its officers, agents, representatives, and successors, and Respondent, Jeffrey Curtin, its business representative, shall:

1. Cease and desist from:

(a) Inducing or encouraging any employee of Edward Kraemer & Sons, Inc., Great Northern Container Corp., or any other person engaged in commerce or in an industry affecting commerce, to refuse to perform any service in the course of his employment, with an object of forcing or requiring the employer, or any other person, to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

(b) Threatening, coercing, or restraining Edward Kraemer & Sons, Inc., Great Northern Container Corp., or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring it to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in Respondent Union's offices, meeting halls, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix A."[2] Copies of the notice, on forms provided by the Regional Director for Region 30, after being duly signed by authorized representatives of the Respondent shall be posted by the Respondents immediately upon receipt thereof, and be maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. Upon request of the Regional Director, the Respondents shall supply him with a sufficient number of signed copies for posting by Edward Kraemer & Sons, Inc., by Great Northern Container Corp., and by Courtney & Plummer, Inc., at all places where notices to their respective employees are customarily posted, if the employers desire to do so.

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[2] In the event that this Recommended Order is adopted by the Board, the words "This Notice is Posted by Order" shall be substituted for the words "Pursuant to the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, there shall be added after the words "An Agency of the United States Government" the words "as Enforced by the United States Court of Appeals."

[8] (b) Notify the Regional Director for Region 30, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondents have taken to comply herewith.[3]

B. Respondent, International Union of Operating Engineers, Local 139, its officers, agents, representatives, and successors, and Respondent, Donald Shaw, its business representative, shall:

1. Cease and desist from:

(a) Inducing or encouraging any employee of Edward Kraemer & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, to refuse to perform any service in the course of his employment, with an object of forcing or requiring the employer, or any other person, to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

(b) Threatening, coercing, or restraining Edward Kraemer & Sons, Inc., or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring it to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in Respondent Union's offices, meeting halls, and all other places where notices to its members are customarily posted, copies of the attached

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[3] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 30, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith."

notice marked "Appendix B."[4] Copies of the notice, on forms provided by the Regional Director for Region 30, after being duly signed by authorized representatives of the Respondents, shall be posted by the Respondents immediately upon receipt thereof, and be maintained by them for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. Upon request of the Regional Director, the Respondents shall supply him with a sufficient number of signed copies for posting by Edward Kraemer & Sons, Inc., and by Courtney & Plummer, Inc., at all places where notices to their respective employees are customarily posted, if the employers desire to do so.

[9] (b) Notify the Regional Director for Region 30, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondents have taken to comply herewith.[5]

It is also ordered that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

Dated at Washington, D. C.

/s/ Marion C. Ladwig
Trial Examiner

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[4] In the event that this Recommended Order is adopted by the Board, the words "This Notice is Posted by Order" shall be substituted for the words "Pursuant to the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, there shall be added after the words "An Agency of the United States Government" the words "as Enforced by the United States Court of Appeals."

[5] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 30, in writing, within 10 days from the date of this Order, what steps the Respondents have taken to comply herewith."

TXD-451-69

Appendix A

NOTICE TO ALL MEMBERS

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board

An Agency of the United States Government

WE WILL NOT picket at entrances reserved for EDWARD KRAEMER & SONS, GREAT NORTHERN CONTAINER CORP., or any other employer, or otherwise appeal to employees not to enter the reserved entrances, with a purpose of forcing the employer to stop doing business with COURTNEY & PLUMMER or any other company.

GENERAL DRIVERS AND DAIRY EMPLOYEES, LOCAL UNION 563
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

Dated ..... By .....
(Jeffrey Curtin, Business Representative)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice may be directed to the Board's Regional Office, 2nd Floor Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin 53203, Tel. (414) 272-3872.

TXD-451-69

Appendix B

NOTICE TO ALL MEMBERS

Pursuant to the Recommended Order of a Trial Examiner
of the National Labor Relations Board
An Agency of the United States Government

WE WILL NOT picket at entrances reserved for EDWARD KRAEMER & SONS, or any other employer, or otherwise appeal to employees not to enter the reserved entrances, with a purpose of forcing the employer to stop doing business with COURTNEY & PLUMMER, or any other company.

WE WILL NOT threaten to picket entrances reserved for EDWARD KRAEMER & SONS or any other employer, with a purpose of forcing the employer to stop doing business with COURTNEY & PLUMMER, or any other company.

INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL 139
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

Dated ..... By .....
(Donald Shaw, Business Representative)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

Any questions concerning this Notice may be directed to the Board's Regional Office, 2nd Floor Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin 53203, Tel. (414) 272-3872.

APPENDIX "G"

179 NLRB No. 109

(Caption Omitted in Printing)

DECISION AND ORDER

On July 17, 1969, Trial Examiner Marion C. Ladwig issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a brief in support thereof, and the Charging Party filed cross-exceptions and brief and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, cross-exceptions and briefs, and the entire record in this case, and hereby adopts the findings,[1] con-

[1] The Charging Party has excepted to certain credibility resolutions made by the Trial Examiner. It is the Board's established policy not to overrule a Trial Examiner's resolutions as to credibility unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Such a conclusion is not warranted here. *Standard Dry Wall Products, Inc.*, 91 NLRB 544, enfd. 188 F.2d 362 (C.A. 3).

clusions,[2] and recommendations of the Trial Examiner.[3]

Order

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the Respondent, General Drivers and Dairy Employees, Local Union 563, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as modified:

1. The Trial Examiner's Recommended Order is hereby amended by renumbering the first paragraph thereof to read "1. (a)" and by adding the following new paragraph immediately thereunder:

1. (b) Cease and desist from threatening, coercing, or restraining Leach Company, or any other person engaged in commerce or in an industry affecting commerce, with

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[2] We agree with the Trial Examiner's finding that the true objective of the Respondent's picketing from November 21 until December 5 was to enmesh neutral employers in its primary dispute with C & P. In so finding, we rely, in addition to the Trial Examiner's rationale, upon the fact that, throughout this period, the Union picketed exclusively at gate 1, the gate reserved for Leach and neutrals serving Leach, while failing to post pickets at gate 2, the entrance reserved for C & P. In this connection, we note that the "freight haulers" referred to by the Trial Examiner, were all neutral employers doing business with Leach. By thus confining its picketing to gate 1, it is clear that the Respondent's intention could not have been to appeal to C & P employees who were using gate 2, but, rather, it must have been seeking to force neutral employers, using gate 1, to cease doing business with Leach, another neutral employer, so that the latter would cease doing business with C & P.

[3] The Trial Examiner inadvertently omitted from his Recommended Order and the "Appendix" attached thereto any provision to remedy the Respondent's violation of Section 8(b)(4)(ii)(B) of the Act. In addition, the Trial Examiner's proposed "Appendix" inadvertently fails to provide the broad language recommended by him in "The Remedy" section of his Decision. We shall therefore amend the Order and conform the Appendix.

an object of forcing or requiring it to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

2. The Appendix is hereby amended by deleting the first paragraph thereof and substituting the following in lieu thereof:

WE WILL NOT induce or encourage any employee of any supplier or motor freight carrier to refuse to make any pickup or delivery at LEACH COMPANY, or any other employer, with an object of forcing or requiring the employer to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

WE WILL NOT threaten, coerce, or restrain LEACH COMPANY, or any other person engaged in commerce or in an industry affecting commerce, with an object of forcing or requiring it to cease doing business with Courtney & Plummer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

Dated, Washington, D.C.

.....
Frank W. McCulloch
Chairman

.....
Gerald A. Brown
Member

.....
Sam Zagoria
Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX "H"

[Case No. 30-CC-105]

[Caption Omitted in Printing]

TRIAL EXAMINER'S DECISION

Statement of the Case

MARION C. LADWIG, Trial Examiner: This case was tried at Oshkosh, Wisconsin, on June 3, 1969, pursuant to a charge filed on November 29, 1968,[1] by Fox Valley Construction Materials Suppliers Association, Inc., herein called the Association, against the Respondent, General Drivers and Dairy Employees, Local Union 563, herein called the Union, and pursuant to a complaint issued May 7, 1969. The Union engaged in picketing at a common situs, where the primary employer, Courtney & Plummer, Inc., herein called C & P (a member of the Association), was doing construction work for a neutral employer, Leach Company, herein called Leach. The main issue is whether the picketing was for an unlawful secondary objective, of enmeshing neutrals in the Union's dispute with C & P and the Association, in violation of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended.

Upon the entire record, including my observation of the demeanor of the witness, and after due consideration of the briefs filed by the General Counsel, the Association, and the Union, I make the following:

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[1] All dates, unless otherwise indicated, are in 1968.

Findings of Fact

I. The Business of the Employer and the Union Involved

C & P, a Wisconsin corporation located in Appleton, Wisconsin, is engaged in furnishing building materials to the building and construction industry and also is engaged in building and construction work. It annually [2] sells products and furnishes services valued in excess of $1 million to enterprises which are themselves employers engaged in commerce or in industries affecting commerce. The Union admits, and I find, that C & P is an employer engaged in commerce or in industries affecting commerce as defined in Section 2(6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. *Separate Gates*

C & P, acting as general contractor and materials supplier, began on November 14 constructing a truck parking lot at the rear of Leach's Oshkosh plant, where Leach manufactures garbage truck bodies and refuse containers. C & P's trucks, which were being used to haul away excavation fill and to return with crushed stone, were driven through the plant's main entrance (located on Harrison Street Road at the southeast side of the plant), through the east parking lot, and along the north side of the plant to the construetion area.

On November 19, the Union began picketing near the main entrance, using signs which read on one side, "Employees of Fox Valley Materials Suppliers Association, members of Teamsters Local 563, on strike," and on the

other side, "Our only dispute is with Fox Valley Materials Suppliers Association." The Union had no dispute with Leach, but had been on strike against C & P (a member of the Association) since July. The Union had engaged in ambulatory picketing at a number of jobsites when C & P trucks, driven by nonstriking and replacement drivers, were making deliveries.

Soon after the picketing began, C & P established for its own use a separate gate on Harrison Street Road about 460 feet southwest of the main entrance, and constructed a new road from gate, around the south and west sides of the plant property, to the construction site. Thereafter while work was being performed at the jobsite, it posted reserved gate signs at the two entrances. The sign at the C & P entrance read, "GATE NO. 2. This gate reserved exclusively for use of employees and suppliers of COURTNEY & PLUMMER, INC. All other persons *May Not* use this gate." The sign at the main entrance first read:

GATE NO. 1
This Gate *May Not* be used
by employees & suppliers
—————of—————
COURTNEY & PLUMMER, INC.

As discussed hereafter, the sign was later reworded.

B. *Picketing After Separate Gates Established*

Upon posting the reserved gate signs, C & P instructed the employees at the jobsite to use only Gate 2. However, some drivers who were not present at the jobsite at the time continued to use Gate 1—despite the sign—until they received the instructions to go past that gate (upon approaching the premises from the northeast) and to use the second gate to the jobsite. Union picket Walter Kautz credibly testified that after the regular drivers "found

out what they were supposed to do, they all came in . . . Gate 2." That afternoon, the Union stopped picketing early, and resumed the picketing the next morning at Gate 2.

[3] The next day, November 20, some new drivers—not having received instructions to use the second gate—entered through Gate 1, past the reserved gate sign. (The number of times this occurred is not clear. Picket Kautz was the only witness who observed all the picketing. He did not keep any written notes, and he was evidently confused concerning dates—recalling the picketing to have begun on November 18, a day before other witnesses credibly testified it began.) The General Counsel did not offer any explanation for the new drivers failing to respect the reserved gate sign at Gate 1. No photograph of the sign was offered in evidence, and no description was given of the size of either the sign or the printing on it. However, the wording on the sign is quoted in an exhibit with "COURTNEY & PLUMMER, INC." written in all capital letters, as heretofore indicated. Evidently the new drivers, as well as some of the regular drivers the day before, were confused by the prominence of the name on the sign.

Upon being informed by Kautz that C & P trucks were still going through the main entrance, the Union instructed Kautz to picket again at Gate 1.

The next morning, Thursday, November 21, the picketing resumed at the main entrance to the Leach plant. Sometime during the day, Leach Traffic Manager George Brennan walked out to the pickets' car, and (in Brennan's words), "I asked them why they were picketing at the main gate, instead of the Courtney & Plummer gate. They replied that it was because of the Courtney & Plummer sign sitting at the driveway." Brennan reported this conversation to Leach's president, and suggested that the

sign be replaced with a "Leach sign." Leach and C & P representatives met the following day and discussed the "wrong" sign, bearing Courtney & Plummer's name. The sign was then changed, as suggested by Leach's president and C & P's counsel, by deleting the contractor's name, in order that "people approaching the sign would not think that this was for Courtney & Plummer people." The new sign read:

GATE NO. 1
This gate may only be used by
employees, job applicants and
suppliers of LEACH COMPANY
All other persons use Gate No. 2

Also on November 21, C & P formally notified the Union and the pickets, by letters delivered to them, that separate gates had been established, that the signs (as originally worded) had been posted, and that all "contractors and suppliers" had been so advised. The letter requested immediate notice of any violations of the separate gates (but, I note, made no mention of new drivers being notified to use only Gate 2). The following day, November 22, when picketing continued at Gate 1, C & P wrote the Union a second letter, delivered Monday, November 25, advising the Union of the change in the wording of the Gate 1 sign, complaining about the pickets appealing to and turning away suppliers, and requesting the Union to instruct the pickets to refrain from such appeals and to inform suppliers that the Union would take no detrimental action against them for delivering to Leach. The letter also requested the Union to inform C & P immediately of "information relating to the violation of either of the gates."

The record is not clear whether some of C & P's new drivers entered Gate 1 on Thursday, November 21, when the Union resumed picketing there. (This was the third

day of picketing, and picket Kautz testified [4] that on the third day—which he recalled was Wednesday—there were "two of them that went through." However, he also testified that on Thursday—which he recalled as the fourth day of picketing—C & P "had pretty much the same trucks," implying that there were no new drivers that day. I also note that November 20 was the last day C & P hired a competitor's trucks, with drivers, to assist on the project. The evidence does not reveal if any of these drivers had entered Gate 1.)

No C & P trucks entered Gate 1 on November 22, the date the sign was changed. However despite this fact, and the fact that the Union was formally advised on November 25 that the Gate 1 sign had been reworded, the picketing continued near Gate 1 on November 25, 26, 27 and 29, and December 2, 3, 4, and 5, when the job was completed. There was no picketing at Gate 2 at any time after November 20, even though a large number of C & P trucks was entering there daily. On November 29, the day after Thanksgiving when C & P was working on the site but Leach was closed, the Union picketed for a while at Gate 1—at a closed plant—rather than at Gate 2, where C & P trucks were entering. Picket Kautz admitted that no C & P trucks entered Gate 1 after November 21, except on December 4 (when some C & P engineering department employees tried to enter through that gate as the job was being completed, and all or all but one were turned back by the Leach guards before reaching the jobsite—this occurring after continued picketing of the neutral gate for nearly 2 weeks).

Apart from the conflicting evidence concerning the pickets' appeals to truck drivers of neutral employers not to cross the picket line at Gate 1; picket Kautz gave some revealing testimony concerning the Union's motive in picketing at the neutral gate. He testified that he would park on the shoulder of the road about 15 to 20 feet south-

west of Gate 1, and would place one picket sign on the back window of his car and another sign against the front bumper. Answering questions by the General Counsel, he testified that, when motor freight trucks would approach Gate 1 (from the southwest), "I would get out [of my car] and take our picket sign . . . I would go in front of the gate. . . . And the truck would stop, freight haulers. . . . They would ask me what the trouble was, and I'd tell them [that] Courtney & Plummer is in here and they belong to the Fox Valley Association, and the drivers would not cross. . . . After the truck was gone, I'd get in the car and sit down." He later testified, when called called as a defense witness:

> Q. Now, was there any reason, any other reason that you selected that particular spot to normally park your car?
>
> A. I thought I had a better chance to stop the trucks from going in there, freight haulers and stuff.

Concerning his conversation with one motor freight driver at Gate 1, Kautz testified that a Motor Express driver gave him "a little rough time"; "He asked me if that was legal picketing there. . . . And I says, 'I don't know, but I was told to be here. And if you want to find out anything else, you either call Local 563, or see your business agent.' . . . The next day, he came back and he apologized . . . and he says he called his business agent and he told him to stay out if there was a picket sign."

No motor freight trucks entered Gate 1 when the Union was picketing at that gate.

[5] Concerning the allegation in the complaint that the Union picketed at Gate 1 at times when no C & P employees were present at the construction site, the General Counsel and C & P rely on the testimony of one of General Counsel's witnesses, Leach Traffic Manager George Brennan, who testified that the union pickets were at Gate 1

until 4:30 p.m. on November 25, 26, 27, and December 2 and 3, although C & P quit working at 3 p.m. on those days. However this testimony is disputed in part by the testimony of another General Counsel, C & P Construction Engineer Daniel H. Howman, who admitted that the pickets left about 3 p.m. on November 25, about 3:40 p.m. on November 26, and about 3:15 p.m. on November 27. I discredit Brennan's testimony about the length of time the pickets remained at Gate 1 daily, and credit picket Kautz' testimony that he took down the picket signs when C & P removed the reserved gate signs, and left in his car when all the C & P employees were gone. Concerning the General Counsel's contention that Kautz' car was used as a signal to neutrals, there is no evidence in this record to support the assertion.

Gate 2 was near the Leach employees' credit union building. During the picketing, some of these employees entered Gate 2 when going to the credit union.

C. *Concluding Findings*

When C & P posted the reserved gate signs on the neutral Gate 1 and the primary Gate 2, it did not take adequate steps to avoid violations of the reserved gates. It gave instructions to the drivers already at the jobsite to use only Gate 2, but did not notify its other regular drivers and its new drivers before they reached the jobsite. As a result, on the first 2 or 3 days of picketing (November 19-21), some of the construction drivers entered gate 1 instead of Gate 2 to reach the construction site—after the reserved gates had been established. (The evidence does not disclose when the primary employer, Leach, instructed its guards to begin turning back C & P drivers entering Gate 1.) Meanwhile, C & P waited until the third day of picketing to notify the Union in writing about the arrangement for separate gates, and then did not mention

any steps being taken to eliminate violations by new drivers who had been entering the jobsite through the neutral gate on their first trip to the jobsite. Finally, at the suggestion of Leach's president and C & P's counsel, C & P changed the wording on the Gate 1 sign deleting the name, "COURTNEY & PLUMMER, INC." to eliminate the confusion to truck drivers approaching the Leach plant —and so notified the Union in writing on Monday, November 25.

On the afternoon of Tuesday, November 19, when C & P's uninstructed regular drivers were still going through Gate 1 until notified on the jobsite to start using Gate 2, the Union continued to picket near Gate 1. The next day, Wednesday, the Union picketed at the gate reserved for C & P's drivers, and did not picket at Gate 1. However, while picketing at Gate 2, the pickets observed new drivers violating the reserved gates and entering the jobsite through Gate 1. The next day, November 21, the pickets returned to Gate 1, and complained to a Leach representative about "the Courtney & Plummer sign sitting at the driveway." However, the Union no longer picketed at Gate 2, where a large number of C & P trucks were entering daily, and continued picketing at Gate 1— even after receiving formal notice of the changed sign on November 25, and after the violations had ceased.

[6] In the meantime, on and after November 21, the Union picketed near Gate 1, and specially appealed to the drivers of neutral motor freight haulers not to enter. The picket or pickets would sit in their car until a motor freight truck would approach. Then the pickets would get out of the car and start carrying the picket signs in front of the gate. The motor freight driver would stop and ask about the picketing. The picket would advise him that C & P was working inside, and that C & P belongs to the Association (whose members the Union had been striking for months) —thereby inducing the freight hauler not to enter. "After

the truck had gone, I'd get in the car and sit down." Union picket Kautz further admitted that he was picketing near Gate 1 because "I thought I had a better chance to stop the trucks from going in there, freight haulers and stuff." As also demonstrated by the pickets' failure to picket at Gate 2 after November 20, and by the Union picketing on the morning of November 29 at the closed Leach plant rather than at Gate 2 where C & P trucks were entering, the Union was appealing to the drivers of the neutral truck lines to honor the picket line, rather than appealing to C & P's nonstriking and replacement drivers. No motor freight drivers entered the Leach premises while the Union was picketing Gate 1.

The General Counsel contends that when the Union resumed picketing at the neutral Gate 1 on November 21, it failed to comply with one of the standards set forth in the *Moore Dry Dock* case, *Sailors' Union of the Pacific* (*Moore Dry Dock Co.*), 92 NLRB 547, 549 (1950), that the picketing be "limited to places reasonably close to the location of the *situs.*" However, under the circumstances of this case, I find that during the first 4 days of picketing, "the method and manner in which the primary entrance was designated was not such as to warrant circumscribing the area of permissible common situs picketing." *International Brotherhood of Electrical Workers, Local 640, AFL-CIO* (*Timber Buildings, Inc.*), 176 NLRB No. 17 (1969); *International Brotherhood of Electrical Workers, Local 441, AFL-CIO* (*Suburban Development Co.*), 158 NLRB 549 (1966). C & P, the primary employer, permitted the reserved neutral gate to be violated repeatedly by failing to instruct all its drivers which gate to use before they arrived at the jobsite and posted a sign which was apparently misleading or confusing to drivers approaching the Leach premises. In its brief, C & P argues that even if the Union pickets had remained at Gate 2, the asserted violations "would not

have substantially prejudiced the Union," in view of the limited number of violations when compared to the hundreds of C & P truck crossings at Gate 2, and in view of the fact that the violations would occur only on the drivers' first trips to the jobsite. I find, though, that when the Union honored the reserved signs, moved the picketing to the primary gate, and then observed the violations continuing, it had no way of knowing how long or how frequently the violations would be permitted, and it had the right to make its legitimate, direct appeal to the C & P drivers on their first trip to the jobsite. The primary employer failed to provide reasonable assurances to the Union at the time that the reserved gates would be honored by the employer's own drivers.

By Monday, November 25, the situation had changed. C & P had changed the reserved gate sign at the primary gate; it had given written notice to the Union of the change; and the violations by its own drivers had ceased for at least one workday. I therefore find that by picketing at Gate 1 on November 25 and thereafter, rather than picketing at the reserved primary gate, the Union failed to comply with the *Moore Dry Dock* requirement that it picket reasonably close to the situs of its dispute with C & P, and violated Section 8(b)(4)(i) and (ii)(B) of [7] the Act. (Although some of Leach's employees used the primary Gate 2 when going to the nearby credit union building, that fact did not justify the Union appealing to other neutral employees by continuing to picket at neutral Gate 1.)

Moreover, apart from the Moore Dry Dock standards, there was evidence disclosing that the true objective of the picketing was the unlawful enmeshment of neutrals from November 21 until December 5 as alleged in the complaint. The only times the pickets carried the picket signs and patrolled at the entrance to the Leach plant were when

motor freight trucks approached. Although the picket signs clearly disclosed that the dispute was with the primary employer, the picket was specially appealing to the motor freight drivers not to cross the picket line—while not even picketing at the primary gate—and Union picket Kautz admitted picketing at the neutral gate because he thought he had a "better chance" there of stopping the "freight haulers" from entering. I therefore find that the picketing at Gate 1 had the purpose and effect of inducing employees of neutral motor freight carriers to refuse to deliver and pick up freight at the Leach plant, and coercing Leach, for an object of forcing Leach to cease doing business with C & P. Accordingly, I find that the Union violated Section 8(b)(4)(i) and (ii)(B) of the Act from November 21 through December 5.

In its brief, the Union argues that "the Union had no legal obligation to comply with the so-called reserved gates system as a matter of law"; that *Building and Construction Trades Council of New Orleans, AFL-CIO (Markwell and Hartz, Inc.)*, 155 NLRB 319 (1965), enfd. 387 F.2d 402 (5 Cir. 1967), was erroneously decided; and that the Act "does not authorize the Board to make one rule with respect to the scope of the right to strike for factory workers and another, far more restrictive rule [the *Moore Dry Dock* standards] for building trades or truckdrivers." However, even if the principles expressed in the *General Electric case, Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO (General Electric Co.) v. N.L.R.B.*, 366 U.S. 667 (1961), were applicable here instead of the *Moore Dry Dock* standards, neither the operation of the Leach plant nor the motor freight deliveries and pickups at the Leach plant would be related to C & P's construction of the new truck parking lot, and picketing at the neutral gate reserved for Leach and its suppliers would still be for a proscribed secondary object.

Conclusions of Law

By picketing from November 21 through December 5 at the Leach plant entrance with an object of forcing Leach to cease doing business with C & P, the Union engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has committed certain unfair labor practices, I shall recommend that it be ordered to cease and desist from such conduct, and to take affirmative action, which I find necessary to remedy and to remove the effect of the unfair labor practices and to effectuate the policies of the Act.

Because of the Union's earlier violations of the secondary boycott provisions in the Act, as found by the Board in *General Teamster, Warehouse and Dairy Employees, Local No. 126, et al. (Courtney & Plummer, Inc.)*, 175 NLRB No. 86 (1969), and *General Drivers and Dairy Employees* [8] *Local Union 563, et al. (Fox Valley Material Suppliers Association, Inc.)*, 176 NLRB No. 51 (1969), I shall recommend the issuance of a broad order.

Accordingly, on the basis of the foregoing findings and conclusions, and on the entire record, I recommend pursuant to Section 10(c) of the Act, issuance of the following:

ORDER

Respondent, General Drivers and Dairy Employees, Local Union 563, its officers, agents, representatives, and successors shall:

1. Cease and desist from inducing or encouraging any employee of any supplier or motor freight carrier to refuse to make any pickup or delivery at Leach Company, or any other employer, with an object of forcing or requiring the employer to cease doing business with Courtney & Plum-

mer, Inc., with any other member of Fox Valley Construction Materials Suppliers Association, Inc., or with any other employer or person.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post in conspicuous places in Respondent's offices, meeting halls, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 30, after being duly signed by an authorized representative of the Respondent, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Upon request of the Regional Director, the Respondents shall supply him with a sufficient number of signed copies for posting by Leach Company and by Courtney & Plummer, Inc., at all locations where notices to their respective employees are customarily posted, if they desire to do so.

(b) Notify the Regional Director of Region 30, in writing, within 20 days from the date of the receipt of this Decision, what steps the Respondent has taken to comply herewith.[3]

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[2] In the event that this Recommended Order is adopted by the Board, the words "This Notice is Posted by Order" shall be substituted for the words "Pursuant to the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of the United States Court of Appeals, there shall be added after the words "An Agency of the United States Government" the words "as Enforced by the United States Court of Appeals."

[3] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify the Regional Director for Region 30, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

[9] It is also ordered that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

Dated at Washington, D.C.

/s/ Marion C. Ladwig
Trial Examiner
TXD-415-69

Appendix

NOTICE TO ALL MEMBERS

Pursuant to the Recommended Order of a Trial Examiner
of the National Labor Relations Board
An Agency of the United States Government

WE WILL NOT picket at any plant gate which is reserved for employees and suppliers of LEACH COMPANY or any other employer, with a purpose of stopping freight haulers from entering the plant in order to force the employer to quit doing business with COURTNEY & PLUMMER or any other company.

GENERAL DRIVERS AND DAIRY
EMPLOYEES, LOCAL UNION 563
(Labor Organization)

Dated .....

By .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice may be directed to the Board's Regional Office, 2nd Floor Commerce Building, 744 North 4th Street, Milwaukee, Wisconsin 53203, Tel. (414) 272-3861.

APPENDIX "I"

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151 et. seq.):

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e):

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing:

Sec. 10 (c):

"* * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. . . ."

Sec. 10 (e)

(e) The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court. Unless the failure or neglect to urge such objection shall be ex-

cused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the approprate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

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In the Supreme Court of the United States

OCTOBER TERM, 1971

GENERAL DRIVERS AND DAIRY EMPLOYEES, LOCAL UNION NO. 563, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

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1. Seven cement contractors who are members of the Fox Valley Material Suppliers Association have annually entered into collective bargaining agreements, negotiated on their behalf by the Association, with petitioners General Drivers and Dairy Employees Local 563 ("Teamsters") and Local 139, International Union of Operating Engineers, AFL-CIO ("Engineers"). (Pet. App. A17, A21.)[1] On

[1] All members had contracts with Teamsters; four had contracts with Engineers (Pet. App. A21).

May 1, 1968, the contracts then current between the Unions and the contractors expired (Pet. App. A21). On July 29, 1968, after negotiations for new contracts had collapsed, Teamsters struck all seven contractors; the next day Engineers struck the four with which it had contractual relations *(ibid.)*.

During the strike, the Unions engaged in the following secondary activity, which the Board found violated Section 8(b)(4)(B) of the National Labor Relations Act (29 U.S.C. 158(b)(4)(B)):

a. Threatened to put Concrete Pipe Corp., a manufacturer of concrete products, out of business if it continued to deal with two of its suppliers who were among the seven Association contractors with whom Petitioners were engaged in the primary dispute. Concrete Pipe's employees were also advised to walk off the job when one of the supplier's trucks appeared. (Pet. App. A24.)

b. Threatened subcontractor Schindler and his employee, both members of Engineers, with union disciplinary measures if they continued working on a project where one of the seven Association contractors was also a subcontractor (Pet. App. A28-31).

c. Threatened an Engineers member employed by general contractor Fox Valley Construction Company with expulsion for working there because one of the Association contractors was a supplier (Pet. App. A31-33).

d. Threatened to strike a general contractor at a construction project on the plant premises of Com-

bined Paper Mills because one of the Association contractors was working on another project at the same premises (Pet. App. A33-35).

e. Threatened to damage the equipment of a supplier of one of the Association contractors unless it ceased making deliveries to that contractor (Pet. App. A38-40).

f. Threatened subcontractors Bloomer and Kraemer with work stoppages if they continued to work at the Highway 41 Project where one of the seven Association members was the general contractor, and then picketed separate gates set up for the exclusive use of those subcontractors (Pet. App. A40-52, A76-79).

g. Declined to confine picketing at the Great Northern Container Corp. and Leach Company plants, where one of the Association contractors was engaged in construction work, to the separate gates reserved for that contractor (Pet. App. A79-83, A94-105).

In addition to this secondary boycott activity, the Board found that, on seven separate occasions, the Unions violated Section 8(b)(1)(A) of the Act, 29 U.S.C. 158(b)(1)(A), by threatening physical harm, blocking access to the primary employers' work sites, and in several cases inflicting bodily injury or property damage (Pet. App. A57-58).

The Board ordered Teamsters and Engineers, *inter alia*, to cease and desist from the secondary conduct found to be unlawful, not only where it is in furtherance of a dispute with "the members of the Fox

Valley Material Suppliers Association, Inc.," the 7 primary employers involved here, but also where the primary dispute is with "any other employer or person" (Pet. App. A60, A62, A71, n. 1, A84-86, A91, n. 3, A105). The court of appeals, in a *per curiam* opinion, upheld the Board's findings and enforced its order (Pet. App. A1-7).

2. Petitioners do not here contest the Board's unfair labor practice findings, but only that portion of its order which prohibits them from engaging in secondary activity in furtherance of a primary dispute with any other employer or person. Thus the narrow issue presented is whether, in the circumstances of this case, the Board was justified in concluding that, in the absence of restraint, it is likely that in future disputes with primary employers other than those involved here Teamsters and Engineers will again resort to unlawful secondary conduct. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 437. Such an issue turns on its particular facts and does not warrant further review.

In any event, the facts here amply warrant a broad order. This is not a case, as petitioners contend (Pet. 3), in which the Unions "transgressed * * * lines 'more nice than obvious.'" Rather, petitioners' tactics included not only the incidents which it contested in the court of appeals, but also such other illegal conduct as threats of violence directed toward nonconforming employees and threats of business loss and equipment damage directed toward

recalcitrant employers. Moreover, contrary to petitioners' argument (Pet. 10), the mere fact that the seven primary employers bargained jointly through an association does not mean that the dispute involves "the equivalent of one employer." For the Unions' unlawful activity was not directed against the Association as such, but against a number of separate employers on a variety of fronts. In these circumstances, the Board reasonably concluded that petitioners' tendency to engage in secondary boycott activity was sufficiently established to support a broad order.[2] No similar factual predicate for a broad order existed in *Communications Workers of America* v. *National Labor Relations Board*, 362 U.S. 479 (Pet. 6-8).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1971.

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[2] See also *General Drivers, etc. Local 563 (Northern Contractors Supply, Inc.)*, 183 NLRB No. 101, 74 LRRM 1767, pending enforcement, C.A. 7, No. 18976; *General Drivers, etc. Local 563, et al.*, 186 NLRB No. 38, 76 LRRM 1787, pending enforcement, C.A. 7, No. 71-1332.

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